ERISA STATUTES

29 U.S.C. §1001

§ 1001. Congressional findings and declaration of policy

(a) Benefit plans as affecting interstate commerce and the Federal taxing power

The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans are carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of

plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc., for fiduciaries

It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued benefits, setting minimum standards of funding, requiring termination insurance

It is hereby further declared to be the policy of this chapter to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

29 U.S.C. §1002(22)

(22) The term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. . .

29 U.S.C. §1002(23)

(23) The term "accrued benefit" means–

(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and, except as provided in section 1054(c)(3) of this title, expressed in the form of an annual benefit commencing at normal retirement age, or

(B) in the case of a plan which is an individual account plan, the balance of the individual's account.

* * *

29 U.S.C. §1002(24)

(24) The term "normal retirement age" means the earlier of–

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of–

(i) the time a plan participant attains age 65, or

(ii) the 5th anniversary of the time a plan participant commenced participation in the plan.

* * *

29 U.S.C. §1002(34)

(34) The term "individual account plan" or "defined contribution plan" means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any

forfeitures of accounts of other participants which may be allocated to such participant's account.

29 U.S.C. §1002(35)

(35) The term "defined benefit plan" means a pension plan other than an individual account plan . . .

29 U.S.C. §1053(a)

Minimum vesting standards

(a) Nonforfeitability requirements

Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A) or (B).

(A) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(B) A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	**The nonforfeitable percentage is**
3	20
4	40
5	60

6.....	80
7 or more	100.

* * *

29 U.S.C. §1053(e)
(as formulated from 1986 to December 8, 1994)

(e) Consent for distribution; present value; covered distributions.

(1) If the present value of any nonforfeitable benefit with respect to a participant in a plan exceeds $3,500, the plan shall provide that such benefit may not be immediately distributed without the consent of the participant.

(2)(A) For purposes of paragraph (1), the present value shall be calculated–

(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) [sic] be less than $25,000.

(B) For purposes of subparagraph (A), the term "applicable interest rate" means the interest rate which would be used (as of the date of distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

* * *

29 U.S.C. §1053(e)
(as formulated after December 8, 1994)

(e) Consent for distribution; present value; covered distributions.

(1) If the present value of any nonforfeitable benefit with respect to a participant in a plan exceeds $ 3,500 [after 1997, $5,000], the plan shall provide that such benefit may not be immediately distributed without the consent of the participant.

(2) For purposes of paragraph (1), the present value shall be calculated in accordance with section 205(g)(3).

29 U.S.C. §1055(a)-(e)

§ 1055. Requirement of joint and survivor annuity and preretirement survivor annuity

(a) Required contents for applicable plans

Each pension plan to which this section applies shall provide that--

(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

(b) Applicable plans

(1) This section shall apply to--

(A) any defined benefit plan,

* * *

(c) Plans meeting requirements of section

(1) A plan meets the requirements of this section only if--

(A) under the plan, each participant--

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4).

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless--

(A) (i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as

the Secretary of the Treasury may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

* * *

(d) "Qualified joint and survivor annuity" defined

For purposes of this section, the term "qualified joint and survivor annuity" means an annuity--

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(e) "Qualified preretirement survivor annuity" defined

For purposes of this section--

(1) Except as provided in paragraph (2), the term "qualified preretirement survivor annuity" means a survivor annuity for the life of the surviving spouse of the participant if--

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if--

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had--

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1) of this section, the term "qualified preretirement survivor annuity" means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 1053 of this title).

(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

29 U.S.C. §1055(g)
(as formulated from 1986 to December 8, 1994)

(g) Distribution of present value of annuity; written consent; determination of present value.

(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $ 3,500. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2) If--

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $ 3,500, and

(B) the participant and the spouse of the participant (or where the participant has dies, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) (A) For purposes of paragraphs (1) and (2), the present value shall be calculated-

(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is

not in excess of $ 25,000, and

(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $ 25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) [sic, clause (ii)] be less than $ 25,000.

(B) For purposes of subparagraph (A), the term "applicable interest rate" means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

29 U.S.C. §1055(g)
(as formulated after December 8, 1994)

(g) Distribution of present value of annuity; written consent; determination of present value.

(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $ 3,500 [after 1997, "the dollar limit under section 203(e)(1)"]. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2) If--

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity *exceeds* $ 3,500 [after 1997, "the dollar limit under section 203(e)(1)"], and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) Determination of present value.

(A) In general.

(i) Present value. Except as provided in subparagraph (B), for purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(ii) Definitions. For purposes of clause (i)--

(I) Applicable mortality table. The term "applicable mortality table" means the table prescribed by the Secretary of the Treasury. Such table shall be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986 used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5) of such Code).

(II) Applicable interest rate. The term "applicable interest rate" means the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

(B) Exception. In the case of a distribution from a plan that was adopted and in effect prior to the date of the enactment of the Retirement Protection Act of 1994 [enacted Dec. 8, 1994], the present value of any distribution made before the earlier

of--

(i) the later of when a plan amendment applying subparagraph (A) is adopted or made effective, or

(ii) the first day of the first plan year beginning after December 31, 1999,

shall be calculated, for purposes of paragraphs (1) and (2), using the interest rate determined under the regulations of the Pension Benefit Guaranty Corporation for determining the present value of a lump sum distribution on plan termination that were in effect on September 1, 1993, and using the provisions of the plan as in effect on the day before such date of enactment [Dec. 8, 1994] but only if such provisions of the plan met the requirements of section 205(g)(3) [this paragraph] as in effect on the day before such date of enactment.

29 U.S.C. §1081(a)

§ 1081. Coverage

(a) Plans excepted from applicability of this part [Part 3–Funding]

This Part shall apply to any employee pension benefit plan described in section 1003(a) of this title [plans established by employers engaged in commerce or in an industry or activity affecting commerce], (and not exempted under section 1003(b) of this title) [governmental and church plans, plans maintained solely to comply with workers' compensation laws, foreign plans, and unfunded excess benefit plans], other than–[lists welfare benefit, insurance and other plans, but not defined benefit plans]

* * *

(material in brackets added).

29 U.S.C. §1082(a), (b)

§ 1082. Minimum funding standards

(a) Avoidance of accumulated funding deficiency

(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard (or the alternative minimum funding standard under section 1085 of this title) for any plan year to which this part applies. A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year the plan does not have an accumulated funding deficiency.

* * *

(b) Funding standard account

(1) Each plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

* * *

29 U.S.C. §1132(a)(1)-(3)

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought–

(1) by a participant or beneficiary–

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or

fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

29 U.S.C. §1202(c)

(c) Extended application of regulations prescribed by Secretary of the Treasury relating to minimum participation standards, minimum vesting standards, and minimum funding standards

Regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, and 412 of Title 26 (relating to minimum participation standards, minimum vesting standards, and minimum funding standards, respectively) shall also apply to the minimum participation, vesting and funding standards set forth in parts 2 and 3 of subtitle B of subchapter I of this chapter. . . .

29 U.S.C. §1302(a)

§ 1302. Pension Benefit Guaranty Corporation

(a) Establishment within Department of Labor

There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this subchapter, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this subchapter, which are to be carried out by the corporation, are–

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this subchapter applies, and

(3) to maintain premiums established by the corporation under section 1306 of this title at the lowest level consistent with carrying out its obligations under this subchapter.

INTERNAL REVENUE CODE STATUTES

26 U.S.C. §401(a)(7), (11)

§401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification.–A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section–[listing design and operational requirements under subparagraphs (1) through (34)]

* * *

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

* * *

(11) Requirement of joint and survivor annuity and preretirement survivor annuity.–

(A) In general.–In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless–

(i) in the case of a vested participant who does not dies before the annuity starting date, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

26 U.S.C. §402(a)

§402. Taxability of beneficiary of employees' trust

(a) Taxability of beneficiary of exempt trust. Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

26 U.S.C. §404(a)

§404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule.–If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year.

(1) Pension trusts.--

(A) In general.–In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in an amount determined as follows: [lists the amounts deductible under various circumstances]

* * *

26. U.S.C. §411(a)(1), (2)

§ 411 Minimum vesting standards.

(a) General rule. A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

(1) Employee contributions. A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) Employer contributions. A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

(A) 5-year vesting. A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

* * *

26 U.S.C. §411(a)(7), (9)

(7) Accrued benefit.--

(A) In general.-- For purposes of this section, the term "accrued benefit" means-

(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

* * *

(9) Normal retirement benefit.-For purposes of this section, the term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. . . .

26 U.S.C. §411(a)(11)
(as formulated from 1986 to December 8, 1994)

(11) Restrictions on certain mandatory distributions.

(A) In general. If the present value of any nonforfeitable accrued benefit exceeds $ 3,500, a plan meets the requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant.

(B) Determination of present value.

(i) In general.--For purposes of subparagraph (A), the present value shall be calculated -

(I) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $ 25,000, and

(II) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $ 25,000 (as determined under subclause (I)).

In no event shall the present value determined under subclause (II) be less than $ 25,000.

(ii) Applicable interest rate.--For purposes of clause (i), the term "applicable interest rate" means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

* * *

26 U.S.C. §411(a)(11)
(as formulated after December 8, 1994)

(11) Restrictions on certain mandatory distributions.

(A) In general.--If the present value of any nonforfeitable accrued benefit exceeds $ 3,500 [after 1997, $5,000], a plan meets the requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant.

(B) Determination of present value.--For purposes of subparagraph (A), the present value shall be calculated in accordance with section 417(e)(3).

* * *

26 U.S.C. §417(a)

(a) Election to waive qualified joint and survivor annuity or qualified preretirement survivor annuity.--

(1) In general.-A plan meets the requirements of section 401(a)(11) only if-

(A) under the plan, each participant-

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified

preretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4) of this subsection.

(2) **Spouse must consent to election.**-- . . .

* * *

26 U.S.C. §417(e)
(as formulated from 1986 to December 8, 1994)

(e) Restrictions on cash-outs.

(1) Plan may require distribution if present value not in excess of $ 3,500. A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $ 3,500. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consents in writing to such distribution.

(2) Plan may distribute benefit in excess of $3,500 only with consent. If-

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $ 3,500, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution, the plan may immediately distribute the present value of such annuity.

(3) Determination of present value.

(A) In general. For purposes of paragraphs (1) and (2), the present value shall be calculated-

(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is

not in excess of $ 25,000, and

(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $ 25,000 (as determined under clause (i)).

In no event shall the present value determined under clause (ii) be less than $25,000.

(B) Applicable interest rate. For purposes of subparagraph (A), the term "applicable interest rate" means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

26 U.S.C. §417(e)
(as formulated after December 8, 1994)

(e) Restrictions on cash-outs.

(1) Plan may require distribution if present value not in excess of $ 3,500 [after 1997, "dollar limit"]. A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $ 3,500 [after 1997, "the dollar limit under section 411(a)(11)(A)"]. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consents in writing to such distribution.

(2) Plan may distribute benefit in excess of $ 3,500 only with consent. If--

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $ 3,500 [after 1997, "the dollar limite under section 411(a)(11)(A)"], and

(B) the participant and the spouse of the participant (or

where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) Determination of present value.

(A) In general.

(i) Present value. Except as provided in subparagraph (B), for purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(ii) Definitions. For purposes of clause (i)--

(I) Applicable mortality table. The term "applicable mortality table" means the table prescribed by the Secretary. Such table shall be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)).

(II) Applicable interest rate. The term "applicable interest rate" means the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe,

(B) Exception. In the case of a distribution from a plan that was adopted and in effect before the date of the enactment of the Retirement Protection Act of 1994, the present value of any distribution made before the earlier of--

(i) the later of the date a plan amendment applying subparagraph (A) is adopted or made effective, or

(ii) the first day of the first plan year beginning after

December 31, 1999,

shall be calculated, for purposes of paragraphs (1) and (2), using the interest rate determined under the regulations of the Pension Benefit Guaranty Corporation for determining the present value of a lump sum distribution on plan termination that were in effect on September 1, 1993, and using the provisions of the plan as in effect on the day before such date of enactment; but only if such provisions of the plan met the requirements of section 417(e)(3) as in effect on the day before such date of enactment.

26 U.S.C. §501(a)

§501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation.–An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

* * *

26 U.S.C. §6110(k)(3)

§ 6110. Public inspection of written determinations.

* * *

(b) Definitions. For purposes of this section–

(1) Written determination. The term "written determination" means a ruling, determination letter, technical advice memorandum, or Chief Counsel advice. . . .

* * *

(k) Special provisions.

* * *

(3) Precedential status. Unless the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent.

* * *

TREASURY REGULATIONS

26 C.F.R. §1.401(a)(4)-8(c)(3)
(Sept. 3, 1991-present)

(3) Safe harbor testing method for cash balance plans--(i) General rule. A cash balance plan is a defined benefit plan that defines benefits for each employee by reference to the employee's hypothetical account. An employee's hypothetical account is determined by reference to hypothetical allocations and interest adjustments that are analogous to actual allocations of contributions and earnings to an employee's account under a defined contribution plan. Because a cash balance plan is a defined benefit plan, whether it satisfies section 401(a)(4) with respect to the equivalent amount of contributions is generally determined under paragraphs (c)(1) and (c)(2) of this section. However, a cash balance plan that satisfies each of the requirements in paragraphs (c)(3)(ii) through (xi) of this section is deemed to satisfy section 401(a)(4) with respect to an equivalent amount of contributions.

(ii) Plan requirements in general. The plan must be an accumulation plan. The benefit formula under the plan must provide for hypothetical allocations for each employee in the plan that satisfy paragraph (c)(3)(iii) of this section, and interest adjustments to these hypothetical allocations that satisfy paragraph (c)(3)(iv) of this section. The benefit formula under the plan must provide that these hypothetical allocations and interest adjustments are accumulated as a hypothetical account for each employee, determined in accordance with paragraph (c)(3)(v) of this section. **The plan must provide that an employee's accrued benefit under the plan as of any date is an annuity that is the actuarial equivalent of the employee's projected hypothetical account as of normal retirement age, determined in accordance with paragraph (c)(3)(vi) of this section. In addition, the plan must satisfy paragraphs (c)(3)(vii) through (xi) of this section (to the extent applicable) regarding optional forms of**

benefit, past service credits, post-normal retirement age benefits, certain uniformity requirements, and changes in the plan's benefit formula, respectively.

* * *

(iv) Interest adjustments to hypothetical allocations--(A) General rule. The plan benefit formula must provide that the dollar amount of the hypothetical allocation for each employee for a plan year is automatically adjusted using an interest rate that satisfies paragraph (c)(3)(iv)(B) of this section, compounded no less frequently than annually, for the period that begins with a date in the plan year and that ends at normal retirement age. This requirement is not satisfied if any portion of the interest adjustments to a hypothetical allocation are contingent on the employee's satisfaction of any requirement. Thus, for example, the interest adjustments to a hypothetical allocation must be provided through normal retirement age, even though the employee terminates employment or commences benefits before that age.

(B) Requirements with respect to interest rates. The interest rate must be a single interest rate specified in the plan that is the same for all employees in the plan for all plan years. The interest rate must be either a standard interest rate or a variable interest rate. If the interest rate is a variable interest rate, it must satisfy paragraph (c)(3)(iv)(C) of this section.

(C) Variable interest rates--(1) General rule. The plan must specify the variable interest rate, the method for determining the current value of the variable interest rate, and the period (not to exceed 1 year) for which the current value of the variable interest rate applies. Permissible variable interest rates are listed in paragraph (c)(3)(iv)(C)(2) of this section. Permissible methods for determining the current value of the variable interest rate are provided in paragraph (c)(3)(iv)(C)(3) of this section.

(2) Permissible variable interest rates. The variable interest rate specified in the plan must be one of the following--

(i) The rate on 3-month Treasury Bills,
(ii) The rate on 6-month Treasury Bills,
(iii) The rate on 1-year Treasury Bills,
(iv) The yield on 1-year Treasury Constant Maturities,
(v) The yield on 2-year Treasury Constant Maturities,
(vi) The yield on 5-year Treasury Constant Maturities,
(vii) The yield on 10-year Treasury Constant Maturities,
(viii) The yield on 30-year Treasury Constant Maturities, or
(ix) The single interest rate such that, as of a single age specified in the plan, the actuarial present value of a deferred straight life annuity of an amount commencing at the normal retirement age under the plan, calculated using that interest rate and a standard mortality table but assuming no mortality before normal retirement age, is equal to the actuarial present value, as of the single age specified in the plan, of the same annuity calculated using the section 417(e) rates applicable to distributions in excess of $25,000 (determined under § 1.417(e)-1(d)), and the same mortality assumptions.
(v) Hypothetical account--(A) Current value of hypothetical account. As of any date, the current value of an employee's hypothetical account must equal the sum of all hypothetical allocations and the respective interest adjustments to each such hypothetical allocation provided through the date for the employee under the plan's benefit formula (without regard to any interest adjustments provided under the plan's benefit formula for periods after that date).
(B) Value of hypothetical account as of normal retirement age. Under paragraph (c)(3)(vi) of this section, the value of an employee's hypothetical account must be determined as of normal retirement age in order to determine the employee's accrued benefit as of any date at or before normal retirement age. As of any date at or before normal retirement age, the value of an employee's hypothetical account as of normal retirement age must equal the sum of each hypothetical allocation provided through that date for the employee under the plan's benefit formula, plus the interest adjustments provided through normal retirement age on each of those hypothetical allocations for the

employee under the plan's benefit formula (without regard to any hypothetical allocations that might be provided after that date under the plan's benefit formula). If the interest rate specified in the plan is a variable interest rate, the plan must specify that the determination in the preceding sentence is made by assuming that the current value of the variable interest rate for all future periods is either the current value of the variable interest rate for the current period or the average of the current values of the variable interest rate for the current period and one or more periods immediately preceding the current period (not to exceed 5 years in the aggregate).

(vi) Determination of accrued benefit--(A) Definition of accrued benefit. The plan must provide that at any date at or before normal retirement age the accrued benefit (within the meaning of section 411(a)(7)(A)(i)) of each employee in the plan is an annuity commencing at normal retirement age that is the actuarial equivalent of the employee's hypothetical account as of normal retirement age (as determined under paragraph (c)(3)(v)(B) of this section). The separate benefit that each employee accrues for a plan year is an annuity that is the actuarial equivalent of the employee's hypothetical allocation for that plan year, including the automatic adjustments for interest through normal retirement age required under paragraph (c)(3)(iv) of this section.

(B) Normal form of benefit. The annuity specified in paragraph (c)(3)(vi)(A) of this section must provide an annual benefit payable in the same form at the same uniform normal retirement age for all employees in the plan. The annual benefit must be the normal retirement benefit under the plan (within the meaning of section 411(a)(9)) under the plan.

(C) Determination of actuarial equivalence. For purposes of this paragraph (c)(3)(vi) and paragraph (c)(3)(ix) of this section, actuarial equivalence must be determined using a standard mortality table and either a standard interest rate or the interest rate specified in the plan for making interest adjustments to hypothetical allocations. If the interest rate

used is the interest rate specified in the plan, and that rate is a variable interest rate, the assumed value of the variable interest rate for all future periods must be the same value that would be assumed for purposes of paragraph (c)(3)(v)(B) of this section. The same actuarial assumptions must be used for all employees in the plan.

* * *

(vii) Optional forms of benefit–

* * *

(C) Distributions subject to section 417(e). Except as otherwise required under section 415(b), **if the plan provides for a distribution alternative that is subject to the interest rate restrictions under section 417(e), the actuarial present value of the benefit paid to an employee under the distribution alternative must equal the nonforfeitable percentage (determined under the plan's vesting schedule) of the greater of the following two amounts–**

(1) The current value of the employee's hypothetical account as of the date the distribution commences, calculated in accordance with paragraph (c)(3)(v)(A) of this section.

(2) The actuarial present value (calculated in accordance with § 1.417(e)- 1(d)) of the employee's accrued benefit.

(D) Determination of actuarial present value. For purposes of this paragraph (c)(3)(vii), actuarial present value must be determined using a reasonable interest rate and mortality table. A standard interest rate and a standard mortality table are considered reasonable for this purpose.

* * *

(emphasis added).

26 C.F.R. § 1.411(a)-4T
("temporary" regulation, 1988 to present)

§ 1.411(a)-4T Forfeitures, suspensions, etc. (temporary)

(a) Nonforfeitability. Certain rights in an accrued benefit must be nonforfeitable to satisfy the requirements of section 411(a). This section defines the term "nonforfeitable" for purposes of these requirements. For purposes of section 411 and the regulations thereunder, a right to an accrued benefit is considered to be nonforfeitable at a particular time if, at that time and thereafter, it is an unconditional right. **Except as provided by paragraph (b) of this section, a right which, at a particular time, is conditioned under the plan upon a subsequent event, subsequent performance, or subsequent forbearance which will cause the loss of such right is a forfeitable right at that time.**

* * *

(b) [Reserved]

* * *

(emphasis added)

26 C.F.R. §1.411(a)-7(a)

§ 1.411(a)-7 Definitions and special rules.

(a) Accrued benefit. For purposes of section 411 and the regulations thereunder, the term "accrued benefit" means–

(1) Defined benefit plan. In the case of a defined benefit plan–

(i) If the plan provides an accrued benefit in the form of an annual benefit commencing at normal retirement age, such

accrued benefit, or

(ii) If the plan does not provide an accrued benefit in the form described in subdivision (i) of this subparagraph, an annual benefit commencing at normal retirement age which is the actuarial equivalent (determined under section 411(c)(3) and §1.411(c)-5) of the accrued benefit determined under the plan. In general, the term "accrued benefits" refers only to pension or retirement benefits. . . .

* * *

26 C.F.R. §1.411(a)-11(d)
(1988 to present)

(d) Distribution valuation requirements. In determining the present value of any distribution of any accrued benefit from a defined benefit plan, the plan must take into account specified valuation rules. For this purpose, the valuation rules are the same valuation rules for valuing distributions as set forth in [Code] section 417(e); see §1.417(e)-1(d) . . . **This paragraph also applies whether or not the participant's consent is required under paragraphs (b) and (c) of this section.**

(emphasis added)

26 C.F.R. §1.417(e)-1T
(temporary regulation, 1985 to 1988)

(a) Scope -- (1) New requirements. Section 417(e) restricts the ability of certain qualified plans to distribute any portion of a participant's accrued benefits without the consent of the participant and the participant's spouse. It also requires the present value of accrued benefits to be calculated using specified interest rates. . . . A plan does not satisfy the requirements of sections 401(a)(11) and 417 unless it satisfies the consent requirements, the determination of present value requirements and the other requirements set forth in this

section. . . .

(b) Consent, etc. requirements . . .

(2) Consent. (i) Written consent of the participant and, if the participant is married at the time of the commencement of the distribution of benefits, the participant's spouse (or, if either the participant or the spouse has died, the survivor) is required before the commencement of the distribution of any part of an accrued benefit if the present value of the nonforfeitable accrued benefit is greater than $3,500. . . .

(ii) In determining the present value of the nonforfeitable accrued benefit, a defined benefit plan must use an interest rate not greater than the rate used by the Pension Benefit Guaranty Corporation (PBGC) to value immediate annuities for plans terminating as of either (A) the proposed distribution (or benefit commencement) date or (B) the first day of the plan year that contains the proposed distribution (or benefit commencement) date (the PBGC rate.).

* * *

(e) Present value requirement -- (1) Interest rate. For purposes of determining the present value of any accrued benefit and for purposes of determining the amount (subject to section 415) of any distribution, a defined benefit plan must use an interest rate not greater than the PBGC rate determined in the same manner and time as set forth in paragraph (b)(2)(ii). The same rate must be used for both purposes.

* * *

26 C.F.R. §1.417(e)-1(d)
(as formulated from 1988 to 1995)

(d) Present value requirement--(1) Requirements. For purposes of determining the present value of any accrued benefit and for purposes of determining the amount . . . of any distribution including a single sum, a defined benefit plan is subject to the interest rate limitations described in subparagraph (2) of this paragraph (d) . . . **The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with this paragraph.**

(2) Section 417 interest rate. The [Code] section 417 interest rate is (i) the rate or rates that would be used by the Pension Benefit Guaranty Corporation (PBGC) for a trusteed single-employer plan to value the participant's (or beneficiary's) vested benefit ("applicable interest rate") if the present value of such benefit does not exceed $25,000 and (ii) 120 percent of the applicable interest, as determined in accordance with (i) above, if such present value exceeds $25,000. In no event shall the present value determined by use of 120 percent of the applicable interest rate result in a present value less than $25,000. . . . The applicable interest rates are the interest rates that would be used (as of the date of the distribution) by the PBGC for purposes of determining the present value of that benefit upon termination of an insufficient trustee single-employer plan. Except as otherwise provided by the Commissioner, the applicable interest rates are determined by PBGC regulations. See 29 CFR part 2619 for the applicable PBGC rates.

* * *

(emphasis added)

26 C.F.R. §1.417(e)-1(d)
(as formulated from 1995 to present)

(d) Present value requirement -- (1) General rule. A defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to sections 411(c)(3) and 415) of any distribution, including a single sum, must not be less than the amount calculated using the applicable interest rate described in paragraph (d)(3) of this section (determined for the month described in paragraph (d)(4) of this section) and the applicable mortality table described in paragraph (d)(2) of this section. The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with the preceding sentence. The same rules used for the plan under this paragraph (d) must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required under paragraph (b) of this section.

(2) Applicable mortality table. The applicable mortality table is the mortality table based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)), that is prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see @ 601.601(d)(2)(ii)(b) of this chapter). The Commissioner may prescribe rules that apply in the case of a change to the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(3) Applicable interest rate -- (i) General rule. The applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

* * *

[Note: The foregoing provisions were initially set forth in temporary TR 1.417(e)-1T, and incorporated by reference in TR 1.417(e)-1(d) (1995-present)].

26 C.F.R. §601.201

§ 601.201 Rulings and determinations letters.

(a) General practice and definitions. (1) It is the practice of the Internal Revenue Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, **as to their status for tax purposes and as to the tax effects of their acts or transactions.** One of the functions of the National Office of the Internal Revenue Service is to issue rulings in such matters. . . . District directors apply the statutes, regulations, Revenue Rulings, and other precedents published in the Internal Revenue Bulletin in the determination of tax liability, the collection of taxes, and the issuance of determination letters in answer to taxpayers' inquiries or requests. For purposes of this section any reference to district director or district office also includes, where appropriate, the Office of the Director, Office of International Operations.

(2) A "ruling" is a written statement issued to a taxpayer or his authorized representative by the National Office which interprets and applies the tax laws to a specific set of facts. Rulings are issued only by the National Office. The issuance of rulings is under the general supervision of the Assistant

Commissioner (Technical) and has been largely redelegated to the Director, Corporation Tax Division and Director, Individual Tax Division.

(3) A "determination letter" is a written statement issued by a district director in response to a written inquiry by an individual or an organization that applies to the particular facts involved, the principles and precedents previously announced by the National Office. A determination letter is issued only where a determination can be made on the basis of clearly established rules as set forth in the statute, Treasury decision, or regulation, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. Where such a determination cannot be made, such as where the question presented involves a novel issue or the matter is excluded from the jurisdiction of a district director by the provisions of paragraph (c) of this section, a determination letter will not be issued. However, **with respect to determination letters in the pension trust area, see paragraph (o) of this section.**

* * *

(l) Effect of rulings. (1) A taxpayer may not rely on an advance ruling issued to another taxpayer. **A ruling, except to the extent incorporated in a closing agreement, may be revoked or modified at any time in the wise administration of the taxing statutes.** . . . If a ruling is revoked or modified, the revocation or modification applies to all open years under the statutes, unless the Commissioner or his delegate exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the revocation or modification. The manner in which the Commissioner or his delegate generally will exercise this authority is set forth in this section. . . .

* * *

(4) **A ruling found to be in error or not in accord with the current views of the Service may be modified or revoked.** Modification or revocation may be effected by a notice to the taxpayer to whom the ruling originally was issued, or by a Revenue Ruling or other statement published in the Internal Revenue Bulletin.

(5) Except in rare or unusual circumstances, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued **or to a taxpayer whose tax liability was directly involved in such ruling** if (i) there has been no misstatement or omission of material facts, (ii) the facts subsequently developed are not materially different from the facts on which the ruling was based, (iii) there has been no change in the applicable law, (iv) the ruling was originally issued with respect to a prospective or proposed transaction, and (v) the taxpayer directly involved in the ruling acted in good faith in reliance upon the ruling and the retroactive revocation would be to his detriment. **To illustrate, the tax liability of each employee covered by a ruling relating to a pension plan of an employer is directly involved in such ruling.** . . .

(m) Effect of determination letters. A determination letter issued by a district director in accordance with this section will be given the same effect upon examination of the return of the taxpayer to whom the determination letter was issued as is described in paragraph (l) ["L"] of this section, in the case of a ruling issued to a taxpayer, except that reference to the National Office is not necessary where, upon examination of the return, it is the opinion of the district director that a conclusion contrary to that expressed in the determination letter is indicated. A district director may not limit the modification or revocation of a determination letter but may refer the matter to the National Office for exercise by the Commissioner or his delegate of the authority to limit the modification or revocation. In this connection see also paragraphs (n) and (o) of this section.

* * *

(o) **Employees' trusts or plans -- (1) In general. Paragraph (o) provides procedures relating to the issuance of determination letters with respect to the qualification of retirement plans.** Paragraph (o)(2) of this section sets forth the authority of key district directors to issue determination letters. . .

(2) Determination letters. (i) **The district directors of the key district offices (described in paragraph (o)(4) of this section) shall have the authority to issue determination letters involving the provisions of sections 401, 403 (a), 405, and 501(a) of the Internal Revenue Code of 1954** with respect to:

(a) Initial qualification of stock bonus, pension, profit-sharing, annuity, and bond purchase plans;

(b) Initial exemption from Federal income tax under section 501(a) of trusts forming a part of such plans . . .

* * *

(ii) **Determination letters authorized by paragraph (o)(2)(i) of this section do not include determinations or opinions relating to other inquiries with respect to plans or trusts. Thus, except as specifically provided in paragraph (o)(2)(i) of this section, key district directors may not issue determination letters relating to issues under other sections of the Code, such as sections 72, 402 through 404, 412, 502, 503, and 511 through 515** . . .

* * *

(emphasis added).

OTHER TREASURY/IRS AUTHORITY

IRS Publication 794

FAVORABLE DETERMINATION LETTER
(Rev. April 1, 1994)
Catalog Number 20630M

INTRODUCTION

This publication explains the significance of your favorable determination letter, points out some features that may affect the qualified status of your employee retirement plan and nullify your determination letter without specific notice from us, and provides general information on the reporting requirements for your plan.

SIGNIFICANCE OF A FAVORABLE DETERMINATION LETTER

An employee retirement plan qualified under Internal Revenue Code section 401(a) (qualified plan) is entitled to favorable tax treatment. For example, contributions made in accordance with the plan document are generally currently deductible. However, participants will not include these contributions into income until the time they receive a distribution from the plan, at which time special income averaging rates for lump sum distributions may serve to reduce the tax liability. In some cases, taxation may be further deferred by rollover to another qualified plan or individual retirement arrangement. (See Publication 575, Pension and Annuity Income, for further details.) Finally, plan earnings may accumulate free of tax.

Employee retirement plans that fail to satisfy the requirements under Code section 401(a) are not entitled to favorable tax treatment. Therefore, many employers desire advance assurance that the terms of their plans satisfy the qualification

requirements. The Internal Revenue Service provides such advance assurance by means of the determination letter program. A favorable determination letter indicates that, in the opinion of the Service, the terms of the plan conform to the requirements of Internal Revenue Code section 401(a). In addition, a favorable determination letter may indicate that, on the basis of other information provided in your application, it has been demonstrated that the plan satisfies certain nondiscrimination requirements of Code section 401(a). See the following topic, Limitations of a Favorable Determination Letter, for more details.

LIMITATIONS OF A FAVORABLE DETERMINATION LETTER

A favorable determination letter is limited in scope and may also have a limited useful life. A determination letter generally applies to qualification requirements regarding the form of the plan. A determination letter may also apply to other qualification requirements pertaining to the prohibition against discrimination in favor of highly compensated employees. These requirements are generally referred to as the coverage and nondiscrimination requirements. They include the nondiscrimination requirements of section 401(a)(4) of the Code, the minimum coverage requirements of section 410(b), and certain related requirements.

The extent to which a determination letter applies to the coverage and nondiscrimination requirements depends on the terms of the plan, the scope of the determination you requested, and the additional information you supplied with your application. Your determination letter will contain specific statements that will describe the scope of reliance represented by the letter.

In addition, the following apply generally to all determination letters:

* The determination letter may not include a statement regarding the minimum coverage requirements of Code section 410(b); this means that you have demonstrated that the plan satisfies these requirements by satisfying the ratio-percentage test.

* A favorable determination letter means that you have demonstrated that the plan satisfies the minimum participation requirements of Code section 401(a)(26). (Letters for certain governmental plans may also include a statement regarding a special effective date rule.)

* If you maintain two or more retirement plans some of which were either not submitted to the Service for determination or not disclosed on each application, certain limitations and requirements will not have been considered on an aggregate basis. Therefore, you may not rely on the determination letter regarding the plans when considered as a total package.

* A determination letter does not consider the special requirements relating to affiliated service groups or leased employees unless the letter includes a statement that the requirements of Internal Revenue Code section 414(m) (affiliated service groups), or 414(n) (leased employees) have been considered.

* For plans that are not amended to comply with the final nondiscrimination regulations retroactively to the 1989 plan year, a determination letter may not be relied upon as to whether plan provisions satisfy a good faith interpretation of the requirements of section 401(a)(4) and related sections of the Code.

* No determination letter may be relied on with respect

to the effective availability of benefits, rights, or features under the plan. (See section 1.401(a)(4)-4(c) of the Income Tax Regulations.) Reliance on whether benefits, rights, or features are currently available to a nondiscriminatory group of employees is provided to the extent specified in the letter.

* A determination letter does not consider whether actuarial assumptions are reasonable for funding or deduction purposes or whether a specific contribution is deductible.

* A determination letter does not consider and may not be relied on with respect to certain other matters described in section 4.08 of Rev. Proc. 93-39, 1993-31 I.R.B. 7 (i.e., whether a plan amendment is part of a pattern of amendments that significantly discriminates in favor of highly compensated employees; the use of the substantiation guidelines contained in Rev. Proc. 93-42, 1993-31 I.R.B. 32; and certain qualified separate lines of business requirements of section 414(r) of the Code).

* The determination letter applies only to the employer and its participants on whose behalf the determination letter was issued.

Become familiar with the terms of the determination letter. Please call the contact person listed on the determination letter if you do not understand any terms in your determination letter.

Retention of information. Whether a plan qualifies is determined from the information in the written plan document and the supporting information submitted by the employer. Therefore, you must retain copies of any demonstrations or other information submitted with your application. Such demonstrations determine the extent of reliance provided by your determination letter. Failure to retain such information may limit the scope of reliance on issues for which demonstrations were provided. **The**

determination letter will not provide reliance if:

(1) there has been a misstatement or omission of material facts,

(2) the facts subsequently developed are materially different than the facts on which the determination was made, or

(3) there is a change in applicable law.

Law changes affecting the plan. In general, a determination letter is issued based on the law in effect at the time the application is received. However, your letter may include a statement indicating any exception to this rule.

Amendments to the plan. A favorable determination letter may no longer apply if there is a change in a statute, regulation, or revenue ruling applicable to the qualification of the plan. However, the determination letter will continue to apply for years before the effective date of the statute, regulation, or revenue ruling. If the letter no longer applies to the plan, the plan must be amended to comply with the new requirements to maintain its qualified status.

* * *

PLAN MUST QUALIFY IN OPERATION

Generally, a plan qualifies in operation if it continues to satisfy the coverage and non-discrimination requirements and is maintained according to the terms on which the favorable determination letter was issued. Changes in facts and other bases on which the determination letter was issued may mean that the determination letter may no longer be relied upon.

Some examples of the effect of a plan's operation on a favorable determination are:

Not meeting nondiscrimination in amount requirement. If the determination letter states that the plan satisfies the nondiscrimination in amount requirement of section 1.401(a)(4)-1(b)(2) of the regulations on the basis of a design-based safe harbor, the plan will generally continue to satisfy this requirement in operation if the plan is maintained according to its terms. If the determination letter states that the plan satisfies the nondiscrimination in amount requirement on the basis of a nondesign-based safe harbor or a general test, and the plan subsequently fails to meet this requirement in operation, the letter may no longer be relied upon with respect to this requirement.

Not meeting minimum coverage requirements. If the determination letter does not include a statement regarding the minimum coverage requirements of Code section 410(b), this means that the plan satisfies these requirements by satisfying the ratio-percentage test. However, if the plan subsequently fails to satisfy the ratio- percentage test in operation, the letter may no longer be relied upon with respect to the coverage requirements. Likewise, if the determination letter states the plan satisfies the average benefit test, the letter may no longer be relied on with respect to the coverage requirements once the plan fails to satisfy the average benefit test in operation.

Changes in testing methods. If the determination letter is based in part on a demonstration that a coverage or nondiscrimination requirement is satisfied, and, in the operation of the plan, the method used to test that this requirement continues to be satisfied is changed (or is required to be changed because the facts have changed) from the method employed in the demonstration, the letter may no longer be relied upon with respect to this requirement.

* * *

(emphasis added in text, only, not headings).

A-47

IRS Notice 96-8

Internal Revenue Service (I.R.S.)

Notice

CASH BALANCE PENSION PLANS

Released: January 18, 1996

Published: February 5, 1996

Determining amount of single sum distributions from cash balance plans. This notice provides guidance concerning the requirements of section 411(a) and 417(e) with respect to the determination of the amount of a single sum distribution from a cash balance plan. The notice also describes proposed guidance to be issued later in regulations that would provide a list of standard indices and associated margins for use by cash balance plans in determining the amount of interest credits.

I. Purpose

This notice describes and requests comments on proposed guidance concerning the application of sections 411 and 417(e) to single sum distributions under defined benefit pension plans that are cash balance plans. The proposed guidance is being described in this notice in order to permit advance public comment in anticipation of the publication of regulations that incorporate the proposed guidance.

II. Background

A. General description of cash balance plans

In general terms, a cash balance plan is a defined benefit pension plan that defines benefits for each employee by

reference to the amount of the employee's hypothetical account balance. An employee's hypothetical account balance is credited with hypothetical allocations and hypothetical earnings determined under a formula selected by the employer and set forth in the plan. These hypothetical allocations and hypothetical earnings are designed to mimic the allocations of actual contributions and actual earnings to an employee's account that would occur under a defined contribution plan. Cash balance plans often specify that hypothetical earnings (referred to in this notice as interest credits) are determined using an interest rate or rate of return under a variable outside index (e.g., the annual yield on one-year Treasury securities). Most cash balance plans also are designed to permit, after termination of employment, a distribution of an employee's entire accrued benefit in the form of a single sum distribution equal to the employee's hypothetical account balance as of the date of the distribution. Many cash balance plans also provide that if distribution is in the form of an annuity, the amount of the annuity is determined by dividing the hypothetical account balance by an annuity conversion factor.

As explained below, in order to comply with sections 411(a) and 417(e) in calculating the amount of a single sum distribution under a cash balance plan, the balance of the employee's hypothetical account must be projected to normal retirement age and then the employee must be paid at least the present value, determined in accordance with section 417(e), of that projected hypothetical account balance. If a cash balance plan provides interest credits using an interest rate that is higher than the section 417(e) applicable interest rate, payment of a single sum distribution equal to the hypothetical account balance as a complete distribution of the employee's accrued benefit may result either in a violation of section 417(e) or a forfeiture in violation of section 411(a). This is because, in such a case, the present value of the employee's accrued benefit, determined using the section 417(e) applicable interest rate, will generally exceed the hypothetical account balance. The

following example illustrates this potential problem.

Example. A cash balance plan provides for interest credits at a fixed rate of 8% per annum that are not conditioned on continued employment, and for annuity conversions using the section 417(e) applicable interest rate and mortality table. A fully vested employee with a hypothetical account balance of $45,000 terminates employment at age 45 and elects an immediate single sum distribution. At the time of the employee's termination, the section 417(e) applicable interest rate is 6.5%.

The projected balance of the employee's hypothetical account as of normal retirement age is $209,743. If $209,743 is discounted to age 45 at 6.5% (the section 417(e) applicable interest rate), the present value equals $59,524.

Accordingly, if the plan paid the hypothetical account balance of $45,000, instead of $59,524, the employee would receive $14,524 less than the amount to which the employee is entitled.

Even if a cash balance plan provides interest credits using an interest rate that exceeds the section 417(e) applicable interest rate, the plan can satisfy sections 417(e) and 411(a). Such a plan would provide that the amount of any single sum distribution is equal to the present value of the employee's accrued benefit determined in a manner that satisfies sections 411(a) and 417(e) even if the amount of the single sum exceeds the employee's hypothetical account balance. Thus, in the example above, the plan would satisfy sections 411(a) and 417(e) if the employee received a single sum distribution of $59,524 (the present value of the employee's accrued benefit) rather than $45,000 (the employee's hypothetical account balance).

B. Existing regulatory safe harbor for cash balance plans

Section 1.401(a)(4)-8(c) of the Income Tax Regulations, as issued in September 1991, provides a safe harbor testing method for cash balance plans. Under this method, a cash

balance plan could be tested for nondiscrimination as though it were a defined contribution plan with actual allocations equal to the amount of the hypothetical allocations credited for the plan year. In order to use the safe harbor, a cash balance plan must satisfy certain design requirements that relate to the accrued benefit and valuation rules that are unique to defined benefit plans.

Comments on the September 1991 regulations expressed concern that the safe harbor plan design requirements reflected an interpretation by the Service and Treasury of the qualification requirements that, in certain cases, would require cash balance plans to pay a single sum distribution in excess of the hypothetical account balance. Guidance was requested on the circumstances in which a cash balance plan (whether or not it qualifies for safe harbor nondiscrimination testing) is permitted to distribute a single sum distribution equal to the hypothetical account balance without violating section 411(a) or 417(e).

When revised regulations under section 401(a)(4) were issued in September 1993, the safe harbor testing method for cash balance plans was left unchanged. The Preamble to those regulations indicated that the safe harbor testing method for cash balance plans had generated significant comment and that further guidance would be issued at a later date.

III. Analysis

A. Nonforfeiture and accrual rules

A cash balance plan is a defined benefit plan, not a defined contribution plan, because the benefits provided are not based solely on actual contributions and forfeitures allocated to an employee's account and the actual investment experience and expenses of the plan allocated to the account. Section 411(a)(7) defines an employee's accrued benefit differently for defined benefit plans than for defined contribution plans. Also, defined benefit plans are subject to a number of statutory

provisions that do not apply to defined contribution plans. These include the rules of section 411(b)(1) that limit "backloading" of accruals; the valuation rules of section 417(e); and the definitely determinable benefits requirement of section 401(a)(25). These provisions limit the extent to which a cash balance plan can mimic the benefit and accrual structure of a defined contribution plan.

Under section 411(a)(2), an employee's accrued benefit must become nonforfeitable in accordance with one of the schedules specified in that section. Under s 1.411(a)-7(a)(1)(ii), the term "accrued benefits" generally refers only to pension or retirement benefits. Under section 411(b)(1), the accrual of the retirement benefits payable at normal retirement age must satisfy one of the rules in section 411(b)(1)(A), (B) or (C).

Under a cash balance plan, the retirement benefits payable at normal retirement age are determined by reference to the hypothetical account balance as of normal retirement age, including benefits attributable to interest credits to that age. Thus, benefits attributable to interest credits must be taken into account in determining whether the accrual of the retirement benefits under a cash balance plan satisfies one of the rules in section 411(b)(1)(A), (B) or (C). **Moreover, benefits attributable to interest credits are in the nature of accrued benefits within the meaning of s 1.411(a)-7(a), rather than ancillary benefits, and thus, once accrued, must become nonforfeitable in accordance with a vesting schedule that satisfies section 411(a).**

Cash balance plans can be categorized based on when the benefits attributable to interest credits accrue. **Under one type of cash balance plan (referred to in this notice as a frontloaded interest credit plan), future interest credits to an employee's hypothetical account balance are not conditioned upon future service.** (Of course, benefits attributable to future interest credits may be forfeited in accordance with the plan's vesting provisions, to the extent permitted under section 411.) **Thus, in the case of a frontloaded interest credit plan, the benefits attributable to future interest credits with respect to a hypothetical allocation accrue at the same time that the**

benefits attributable to the hypothetical allocation accrue. As a result, if an employee terminates employment and defers distribution to a later date, interest credits will continue to be credited to that employee's hypothetical account.

A second type of cash balance plan (referred to in this notice as a backloaded interest credit plan) conditions future interest credits upon further service. **In the case of a backloaded interest credit plan, benefits attributable to interest credits do not accrue until the interest credits are credited to the employee's account. Because backloaded interest credit plans typically will not satisfy any of the accrual rules in section 411(b)(1)(A), (B) or (C), it is anticipated that the proposed guidance will address only frontloaded interest credit plans.**

B. Single sum distributions from **frontloaded** interest credit plans

As indicated above, most cash balance plans are designed to permit a distribution of an employee's entire accrued benefit, after termination of employment, in the form of a single sum equal to the employee's hypothetical account balance as of the date of the distribution. In order for a defined benefit plan to satisfy section 417(e), any single sum distribution payable to an employee from the plan must not be less than the nonforfeitable portion of the present value of the employee's accrued benefit under section 411(a)(7) (determined using the applicable interest rate and mortality table under section 417(e)).

1. Determination of the accrued benefit

In the case of a frontloaded interest credit plan, an employee's accrued benefit as of any date before attainment of normal retirement age is based on the employee's hypothetical account balance as of normal retirement age, including future interest credits to that age. If such a plan

specifies a fixed interest rate for use in determining future interest credits, the employee's hypothetical account balance as of normal retirement age (including future interest credits) can be calculated precisely before normal retirement age. However, if a frontloaded interest credit plan specifies a variable outside index for use in determining the amount of interest credits, the precise dollar amount of an employee's hypothetical account balance as of normal retirement age (including future interest credits to normal retirement age), and thus the precise dollar amount of the employee's accrued benefit as of any date before normal retirement age, cannot be calculated prior to normal retirement age.

A frontloaded interest credit plan that specifies a variable outside index for use in determining the amount of interest credits must prescribe the method for reflecting future interest credits in the calculation of an employee's accrued benefit. In order to comply with section 401(a)(25), the method, including actuarial assumptions, if applicable, must preclude employer discretion. Further, in determining the amount of an employee's accrued benefit, a forfeiture, within the meaning of s 1.411(a)-4T, will result if the value of future interest credits is projected using a rate that understates the value of those credits or if the plan by its terms reduces the interest rate or rate of return used for projecting future interest credits. **A forfeiture in violation of section 411(a) also will occur if, in determining the amount of an employee's accrued benefit, future interest credits are not taken into account (i.e., there is no projection of future interest credits) and this has the same effect as using a rate that understates the value of future interest credits.**

2. Calculation of the present value of the employee's accrued benefit

In the case of a frontloaded interest credit plan, a single sum distribution optional form of benefit equal to the hypothetical account balance will satisfy section 417(e) only if the single sum distribution is not less than the present value of the

employee's accrued benefit calculated in accordance with the applicable interest rate and mortality table under section 417(e)(3). As noted above, the amount of the employee's accrued benefit must be determined using a method of reflecting future interest credits that satisfies section 401(a)(25) and that does not create a forfeiture in violation of section 411(a).

3. Situations in which the present value will not exceed the hypothetical account balance

A frontloaded interest credit plan might provide that the amount of interest credits is determined using a variable interest rate or rate of return that, by its terms, is no greater than the applicable interest rate under section 417(e)(3). For example, a plan that has been amended to comply with the changes to section 417(e) made by the Retirement Protection Act of 1994 (RPA '94) might provide that interest credits are determined using the lesser of the current rate of interest on 30-year Treasury securities or the current yield on 1-year Treasury Constant Maturities. Under such a plan, future interest credits can, without violating section 411(a), be projected to normal retirement age using a rate that is no greater than the applicable interest rate under section 417(e)(3). In that case, assuming that the annuity conversion factor under the plan is not less than the annuity conversion factor determined using the applicable interest rate and mortality table under section 417(e)(3), the employee's hypothetical account balance will equal or exceed the present value of the employee's accrued benefit determined in accordance with section 417(e). Thus, a single sum distribution equal to the employee's hypothetical account balance under such a plan will satisfy sections 411(a) and 417(e).

In other cases, a single sum distribution equal to an employee's hypothetical account balance will satisfy sections 417(e) and 411(a) if (a) the annuity conversion factor is not less than the annuity conversion factor determined using the

applicable interest rate and mortality table under section 417(e)(3), (b) under the method for reflecting future interest credits in the calculation of an employee's accrued benefit, the future interest credits are projected using a rate that is no greater that the applicable interest rate under section 417(e)(3), and (c) this projection does not result in a forfeiture in violation of section 411(a).

By contrast, **if the interest rate or rate of return under the plan used in determining the amount of interest credits is high relative to the section 417(e)(3) interest rate, the plan cannot distribute a single sum equal to the employee's hypothetical account balance and satisfy sections 411(a) and 417(e).** If such a plan provided that, in determining an employee's accrued benefit, the rate used for projecting the amount of future interest credits was no greater than the interest rate under section 417(e)(3), the projection would result in a forfeiture. Alternatively, if the plan provided for interest credits to be projected using a rate that exceeded the section 417(e) interest rate but then provided for the benefit to be discounted using that same higher rate, the plan would violate section 417(e).

C. Effect of defining the accrued benefit as the hypothetical account balance

The requirements referred to in this notice apply even in the case of a cash balance plan that defines an employee's accrued benefit as an amount equal to the employee's hypothetical account balance. Section 411(a)(7) defines the accrued benefit in terms of benefits payable under the plan at normal retirement age. In a cash balance plan, for an employee who has not attained normal retirement age, whether the employee's retirement benefit payable at normal retirement age under the plan includes benefits attributable to future interest credits depends on whether those benefits have accrued.

If benefits attributable to future interest credits have accrued, and those benefits are disregarded when benefits

commence before normal retirement age, the plan has effectively conditioned entitlement to the benefits attributable to those future interest credits on the employee not taking a distribution prior to normal retirement age. Pursuant to s 1.411(a)-4T, a right that is conditioned under the plan on a subsequent forbearance is a forfeitable right. Accordingly, conditioning entitlement to benefits on the employee not taking a distribution violates the nonforfeitability requirements of section 411(a).

Alternatively, if the benefits attributable to future interest credits have not accrued and will accrue only as of the later dates when the interest credits are included in the hypothetical account balance, the timing of those later accruals must be taken into account in applying the accrual rules of section 411(b)(1). As a result, such a plan typically will not satisfy those accrual rules.

IV. Description of proposal

A. Variable interest rates that may be assumed for these purposes to be no greater than the 30-year Treasury interest rate

It is anticipated that the regulations will set forth a list of standard indices and associated margins for use with frontloaded interest credit plans that provide interest credits equal to the product of the balance of the hypothetical account and the current value of a variable index. (It is anticipated that this proposal will apply without regard to how frequently the rate used to determine interest credits is compounded.) Under a frontloaded interest credit plan that, for this purpose, specifies a variable index equal to the PBGC immediate rate or the sum of one of the standard indices and a margin not greater than the specified margin associated with that standard index, no impermissible forfeiture would result from projecting that the rate used to determine future interest credits for an employee is no greater than the applicable interest rate under section 417(e)(3), as amended by RPA '94.

Thus, if such a plan has been amended to comply with the changes to section 417(e) made by RPA '94, the employee's entire accrued benefit could be distributed in the form of a single sum distribution equal to the employee's hypothetical account balance without violating section 411(a) or 417(e), provided that the plan provides the appropriate annuity conversion factors.

The table below provides the proposed list of standard indices and associated margins. The discount rates on Treasury bills and the yields on Treasury Constant Maturities are the rates reported in the Federal Reserve Bulletin, and the Consumer Price Index is CPI-U, as reported by the Department of Labor. Authority would be delegated to the Commissioner to approve other indices and associated margins.

Standard Index	Associated Margin
The discount rate on 3-month Treasury Bills	175 basis points
The discount rate on 6-month Treasury Bills or 12-month Treasury Bills	150 basis points
The yield on 1-year Treasury Constant Maturities	100 basis points
The yield on 2-year Treasury Constant Maturities or 3-year Treasury Constant Maturities	50 basis points
The yield on 5-year Treasury Constant Maturities or 7-year Treasury Constant Maturities	25 basis points

The yield on 10-year Treasury Constant Maturities or any longer period Treasury Constant Maturities	0 basis points
Annual rate of change of the Consumer Price Index	3 percentage points

In developing these standard indices and associated margins, the Service and Treasury took into account the historical relationship between each of these indices and the rate of interest on 30-year Treasury securities.

Under the proposal, if a frontloaded interest credit plan specified a variable index for use in determining the amount of interest credits that is equal to the sum of a standard index (listed in the table above) and a margin that exceeds the specified margin associated with that standard index, distribution of a single sum equal to the employee's hypothetical account balance would not satisfy both section 411(a) and section 417(e). If such a plan provided that the rate used for projecting the amount of future interest credits was no greater than the interest rate under section 417(e)(3), the projection would result in a forfeiture. Alternatively, if a frontloaded interest credit plan provided for interest credits to be projected using a rate that exceeded the section 417(e) interest rate but then provided for the benefit to be discounted using that same higher rate, the plan would violate section 417(e).

B. Guidance will be prospective

The anticipated regulations will be effective prospectively. In addition, for plan years beginning before the regulations are effective, a frontloaded interest credit plan would not be **disqualified** for failing to satisfy section 411(a) or 417(e) if the amount of the distribution satisfied those sections based on a reasonable, good-faith interpretation of the applicable provisions of the Code, taking into account pre-existing

guidance. For this purpose, plans that comply with the guidance in this notice are deemed to be applying a reasonable, good faith interpretation.

V. Comments

The Service and Treasury invite comments on the **proposal** described in this notice. Comments are specifically requested on other indices for which guidance may be appropriate and on guidance that would facilitate the transition to use of an approved index (including possible guidance with respect to the application of section 411(d)(6)). **Any suggestion of an index (and associated margin, if any) should include an analysis of the historical relationship between the index and the rate for 30-year Treasury securities.** Comments should be submitted in writing, referencing Notice 96-7, and addressed to--

Associate Chief Counsel
(Employee Benefits and Exempt Organizations)
CC:EBEO
ATTN: Cash Balance Guidance
Room 5214
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

VI. Drafting information

The principal author of this notice is Marjorie Hoffman of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information, contact Ms. Hoffman at 202-622-6030 (not a toll-free number).

Notice 96-8, 1996-1 C.B. 359, 1996-6 I.R.B. 23, 1996 WL 17901 (IRS NOT) (emphasis added)

A-60

Treasury Decision 8360

RULES and REGULATIONS

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8360]

RIN 1545-AM95

Nondiscrimination Requirements for Qualified Plans

Thursday, September 19, 1991

AGENCY: Internal Revenue Service, Treasury.

ACTION: **Final regulations.**

SUMMARY: This document contains **final regulations** under section 401(a)(4) of the Internal Revenue Code of 1986. They interpret the section 401(a)(4) requirement that contributions or benefits provided under a tax-qualified retirement plan not discriminate in favor of highly compensated employees. This section and the minimum coverage requirements of section 410(b) form a coordinated nondiscrimination rule that prohibits a tax-qualified retirement plan from being designed or operated to favor highly compensated employees.

These **final regulations** reflect changes made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. The regulations provide the guidance necessary to comply with the law and affect sponsors of, and participants in, tax-qualified retirement plans. These **final regulations** are issued in conjunction with other sets of final

regulations under sections 401(a)(17), 401(l), 410(b), and 414(s), and were developed in conjunction with final regulations under section 401(a)(26) that will be published in the near future.

EFFECTIVE DATES: These regulations are effective for plan years beginning after December 31, 1991, and applied to those plan years except as set forth in the transition rules of §1.401(a)(4)-13.

FOR FURTHER INFORMATION CONTACT: The attorney listed below for the particular section at 202-377-9372 (not a toll-free number).

§ 1.401-4 Rebecca Wilson or David Munroe
§ 1.401(a)-4 Rebecca Wilson or David Munroe
§ 1.401(a)(4)-1 Rebecca Wilson or David Munroe
§ 1.401(a)(4)-2 Rebecca Wilson or David Munroe
§ 1.401(a)(4)-3 Marjorie Hoffman or David Munroe
§ 1.401(a)(4)-4 Suzanne Tank or David Munroe
§ 1.401(a)(4)-5 Rebecca Wilson or David Munroe
§ 1.401(a)(4)-6 David Munroe
§ 1.401(a)(4)-7 Patricia McDermott
§ 1.401(a)(4)-8 Marjorie Hoffman or David Munroe
§ 1.401(a)(4)-9 David Munroe
§ 1.401(a)(4)-10 Rebecca Wilson or David Munroe
§ 1.401(a)(4)-11 Rebecca Wilson or David Munroe
§ 1.401(a)(4)-12 Rebecca Wilson or David Munroe
§ 1.401(a)(4)-13 Patricia McDermott or David Munroe
§ 411(d)-4 Patricia McDermott or David Munroe

SUPPLEMENTARY INFORMATION: On May 14, 1990, the Internal Revenue Service published in the Federal Register proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 401(a)(4) of the Internal Revenue Code of 1986 (Code) (55 FR 19897). These regulations were proposed in conjunction with regulations under related Internal Revenue Code sections including sections 401(a)(17),

401(a)(26), 410(b), and 414(s) and amendments to regulations under section 401(l). The May 1990 proposed regulations were supplemented and modified by proposed regulations published in the Federal Register on September 14, 1990 (55 FR 37888), and December 3, 1990 (55 FR 49906).

Written comments were received from the public on the proposed regulations. In addition, a public hearing on the May 14, 1990 regulations was announced on May 14, 1990 (55 FR 19897), and a public hearing on the September 14, 1990, regulations was announced on September 14, 1990 (55 FR 37888). These public hearings were held on September 26, 27, and 28, 1990. After consideration of all of the written comments received and the statements made at the public hearing, the proposed regulations under section 401(a)(4) are adopted as modified by this Treasury Decision.

Summary of Significant Modifications

* * *

The following is a brief summary of the more significant substantive modifications in the **final** regulations.
- **New safe harbors are provided for cash balance plans** and section 412(i) insurance contract plans.

* * *

1. Nondiscrimination in Amount of Contributions or Benefits

Overview

* * *

. . . Finally, optional **safe harbor testing methods for** target benefit plans, **cash balance plans**, and defined benefit plans that are part of a floor-offset arrangement **are provided under the cross-testing rules in § 1.401(a)(4)-8.**

* * *

Cash Balance Plans

Several commentators requested clarification of the treatment of cash balance plans, another hybrid plan design that, unlike target benefit plans, was not addressed in the proposed regulations. **Comments indicated that cash balance plans are becoming increasingly popular. Cash balance plans are defined benefit plans that generally determine benefits by reference to an employee's "cash balance" or hypothetical account in a manner analogous to the allocation of contributions and earnings to an employee's account under a defined contribution plan. Under a cash balance plan, each employee's hypothetical account is the sum of the hypothetical allocations for prior plan years provided under a hypothetical allocation formula resembling the allocation formula under a defined contribution plan, plus subsequent interest adjustments through normal retirement age.**

The final regulations have added a safe harbor testing method for cash balance plans. Because cash balance plans are defined benefit plans that calculate benefits in a manner similar to defined contribution plans, **the safe harbor testing method is provided under the cross-testing rules of § 1.401(a)(4)-8(c). The safe harbor testing method permits a cash balance plan to be tested on the basis of the hypothetical allocation formula used to determine an employee's cash balance, rather than on the actual benefits provided under the plan, if certain conditions are satisfied. Among other requirements, the interest adjustments through normal retirement age must be accrued under the plan in the year the hypothetical allocation to which they relate is accrued,** and interest adjustments must be determined using a fixed interest rate between 7.5 and 8.5 percent, or one of a list of variable interest rates provided in the regulations. The fact that **interest adjustments through normal retirement age are accrued in the year of the related**

hypothetical allocation will not cause a cash balance plan to fail to satisfy the requirements of section 411(b)(1)(H), relating to age-based reductions in the rate at which benefits accrue under a plan. The safe harbor also imposes limitations on the granting of past service credit and the provision of subsidized optional forms of benefit.

Some of the comments involving cash balance plans also requested that the final regulations provide special relief for cash balance plans from the requirements of section 417(e). Section 417(e) prescribes certain interest rates that must be used in determining the amount of a single-sum benefit provided under a defined benefit plan. These rates, when combined into a single blended rate, are sometimes lower than the rates used by existing cash balance plans in determining employees' cash balances, and can therefore require a plan that does not use the section 417(e) rates to determine interest adjustments to pay an employee more than the amount of the employee's hypothetical cash balance when benefits are paid in a single sum. The Treasury and the Service have determined that such relief cannot be granted consistent with the requirements of section 417(e). However, in order to minimize the occasions when this problem will arise, the final regulations include a blended section 417(e) interest rate among the alternative safe harbor interest rates a cash balance plan may use in determining interest adjustments.

* * *

6. Cross-Testing Defined Benefit and Defined Contribution Plans

* * *

. . . **As discussed above, the cross testing rules have been expanded to provide safe harbor testing methods for cash balance plans**, to expand the safe harbor testing methods for

floor offset plans, and to clarify the safe harbor testing methods for target benefit plans.

* * *

§ 1.401(a)(4)-8 Cross-testing.

* * *

(c) Nondiscrimination in amount of contributions under a defined benefit plan . . . **Paragraph (c)(3) of this section provides a safe harbor testing method for cash balance plans.**

* * *

(3) Safe harbor testing method for cash balance plans--(i) General rule. A cash balance plan is a defined benefit plan that defines benefits for each employee by reference to the employee's hypothetical account. An employee's hypothetical account is determined by reference to hypothetical allocations and interest adjustments that are analogous to actual allocations of contributions and earnings to an employee's account under a defined contribution plan. Because a cash balance plan is a defined benefit plan, whether it satisfies section 401(a)(4) with respect to the equivalent amount of contributions is generally determined under paragraphs (c)(1) and (c)(2) of this section. However, **a cash balance plan that satisfies each of the requirements in paragraphs (c)(3)(ii) through (xi) of this section is deemed to satisfy section 401(a)(4) with respect to an equivalent amount of contributions.**

(ii) Plan requirements in general. The plan must be an accumulation plan. The benefit formula under the plan must provide for hypothetical allocations for each employee in the plan that satisfy paragraph (c)(3)(iii) of this section, and interest adjustments to these hypothetical allocations that satisfy paragraph (c)(3)(iv) of this section. The benefit formula

under the plan must provide that these hypothetical allocations and interest adjustments are accumulated as a hypothetical account for each employee, determined in accordance with paragraph (c)(3)(v) of this section. **The plan must provide that an employee's accrued benefit under the plan as of any date is an annuity that is the actuarial equivalent of the employee's projected hypothetical account as of normal retirement age, determined in accordance with paragraph (c)(3)(vi) of this section. In addition, the plan must satisfy paragraphs (c)(3)(vii) through (xi) of this section (to the extent applicable) regarding optional forms of benefit**, past service credits, post-normal retirement age benefits, certain uniformity requirements, and changes in the plan's benefit formula, respectively.

(iii) Hypothetical allocations-- (A) In general. The hypothetical allocations provided under the plan's benefit formula must satisfy either paragraph (c)(3)(iii)(B) or (C) of this section. Paragraph (c)(3)(iii)(B) of this section provides a design-based safe harbor that does not require the annual comparison of hypothetical allocations under the plan. Paragraph (c)(3)(iii)(C) of this section requires the annual comparison of hypothetical allocations.

(B) Uniform hypothetical allocation formula. To satisfy this paragraph (c)(3)(iii)(B), the plan's benefit formula must provide for hypothetical allocations for all employees in the plan for all plan years of amounts that would satisfy § 401(a)(4)-2(b)(3) for each such plan year if the hypothetical allocations were the only allocations under a defined contribution plan for the employees for those plan years. Thus, the plan's benefit formula must provide for hypothetical allocations for all employees in the plan for all plan years that are the same percentage of plan year compensation or the same dollar amount. In determining whether the hypothetical allocations satisfy § 1.401(a)(4)-2(b)(3), the only provisions of § 1.401(a)(4)-2(b)(5) that apply are § 1.401(a)(4)-2(b)(5)(ii) (section 401(l) permitted disparity, (iii) (entry dates), (vi) (certain limits on allocations), and (vii) (dollar allocation per uniform unit of service). Thus, for example, the plan's benefit

formula may take permitted disparity into account in a manner allowed under § 1.401(l)-2 for defined contribution plans.

(C) Modified general test. To satisfy this paragraph (c)(3)(iii)(C), the plan's benefit formula must provide for hypothetical allocations for all employees in the plan for the plan year that would satisfy the general test in § 1.401(a)(4)-2(c) for the plan year, if the hypothetical allocations were the only allocations for the employees taken into account under § 1.401(a)(4)- 2(c)(2)(ii) under a defined contribution plan for the plan year. In determining whether the hypothetical allocations satisfy § 1.401(a)(4)-2(c), the provisions of § 1.401(a)(4)-2(c)(2)(iii) through (v) apply. Thus, for example, permitted disparity may be imputed under § 1.401(a)(4)-2(c)(2)(iv) in accordance with the rules of § 1.401(a)(4)-7(b) applicable to defined contribution plans.

(iv) Interest adjustments to hypothetical allocations--(A) General rule. The plan benefit formula must provide that the dollar amount of the hypothetical allocation for each employee for a plan year is automatically adjusted using an interest rate that satisfies paragraph (c)(3)(iv)(B) of this section, compounded no less frequently than annually, for the period that begins with a date in the plan year and that ends at normal retirement age. This requirement is not satisfied if any portion of the interest adjustments to a hypothetical allocation are contingent on the employee's satisfaction of any requirement. Thus, for example, the interest adjustments to a hypothetical allocation must be provided through normal retirement age, even though the employee terminates employment or commences benefits before that age.

(B) Requirements with respect to interest rates. The interest rate must be a single interest rate specified in the plan that is the same for all employees in the plan for all plan years. The interest rate must be either a standard interest rate or a variable interest rate. If the interest rate is a variable interest rate, it must satisfy paragraph (c)(3)(iv)(C) of this section.

(C) Variable interest rates--(1) General rule. The plan must

specify the variable interest rate, the method for determining the current value of the variable interest rate, and the period (not to exceed 1 year) for which the current value of the variable interest rate applies. Permissible variable interest rates are listed in paragraph (c)(3)(iv)(C)(2) of this section. Permissible methods for determining the current value of the variable interest rate are provided in paragraph (c)(3)(iv)(C)(3) of this section.

(2) Permissible variable interest rates. The variable interest rate specified in the plan must be one of the following--

(i) The rate on 3-month Treasury Bills,

(ii) The rate on 6-month Treasury Bills,

(iii) The rate on 1-year Treasury Bills,

(iv) The yield on 1-year Treasury Constant Maturities,

(v) The yield on 2-year Treasury Constant Maturities,

(vi) The yield on 5-year Treasury Constant Maturities,

(vii) The yield on 10-year Treasury Constant Maturities,

(viii) The yield on 30-year Treasury Constant Maturities, or

(ix) The single interest rate such that, as of a single age specified in the plan, the actuarial present value of a deferred straight life annuity of an amount commencing at the normal retirement age under the plan, calculated using that interest rate and a standard mortality table but assuming no mortality before normal retirement age, is equal to the actuarial present value, as of the single age specified in the plan, of the same annuity calculated using the section 417(e) rates applicable to distributions in excess of $25,000 (determined under § 1.417(e)-1(d)), and the same mortality assumptions.

(3) Current value of variable interest rate. The current value of the variable interest rate that applies for a period must be either the value of the variable interest rate determined as of a specified date in the period or the immediately preceding period, or the average of the values of the variable interest rate as of two or more specified dates during the current period or the immediately preceding period. The value as of a date of the rate on a Treasury Bill is the average auction rate for the week or month in which the date falls, as reported in the Federal Reserve Bulletin. The value as of a date of the yield on

a Treasury Constant Maturity is the average yield for the week, month, or year in which the date falls, as reported in the Federal Reserve Bulletin. (The Federal Reserve Bulletin is published by the Board of Governors of the Federal Reserve System and is available from Publication Services, Mail Stop 138, Board of Governors of the Federal Reserve System, Washington DC 20551.) The plan may limit the current value of the variable interest rate to a maximum (not less than the highest standard interest rate), or a minimum (not more than the lowest standard interest rate), or both.

(v) Hypothetical account--(A) Current value of hypothetical account. As of any date, the current value of an employee's hypothetical account must equal the sum of all hypothetical allocations and the respective interest adjustments to each such hypothetical allocation provided through the date for the employee under the plan's benefit formula (without regard to any interest adjustments provided under the plan's benefit formula for periods after that date).

(B) Value of hypothetical account as of normal retirement age. Under paragraph (c)(3)(vi) of this section, the value of an employee's hypothetical account must be determined as of normal retirement age in order to determine the employee's accrued benefit as of any date at or before normal retirement age. As of any date at or before normal retirement age, the value of an employee's hypothetical account as of normal retirement age must equal the sum of each hypothetical allocation provided through that date for the employee under the plan's benefit formula, plus the interest adjustments provided through normal retirement age on each of those hypothetical allocations for the employee under the plan's benefit formula (without regard to any hypothetical allocations that might be provided after that date under the plan's benefit formula). If the interest rate specified in the plan is a variable interest rate, the plan must specify that the determination in the preceding sentence is made by assuming that the current value of the variable interest rate for all future periods is either the current value of the variable interest rate for the current period or the average

of the current values of the variable interest rate for the current period and one or more periods immediately preceding the current period (not to exceed 5 years in the aggregate).

(vi) Determination of accrued benefit--(A) Definition of accrued benefit. The plan must provide that at any date at or before normal retirement age the accrued benefit (within the meaning of section 411(a)(7)(A)(i)) of each employee in the plan is an annuity commencing at normal retirement age that is the actuarial equivalent of the employee's hypothetical account as of normal retirement age (as determined under paragraph (c)(3)(v)(B) of this section). The separate benefit that each employee accrues for a plan year is an annuity that is the actuarial equivalent of the employee's hypothetical allocation for that plan year, including the automatic adjustments for interest through normal retirement age required under paragraph (c)(3)(iv) of this section.

(B) Normal form of benefit. The annuity specified in paragraph (c)(3)(vi)(A) of this section must provide an annual benefit payable in the same form at the same uniform normal retirement age for all employees in the plan. The annual benefit must be the normal retirement benefit under the plan (within the meaning of section 411(a)(9)) under the plan.

(C) Determination of actuarial equivalence. For purposes of this paragraph (c)(3)(vi) and paragraph (c)(3)(ix) of this section, actuarial equivalence must be determined using a standard mortality table and either a standard interest rate or the interest rate specified in the plan for making interest adjustments to hypothetical allocations. If the interest rate used is the interest rate specified in the plan, and that rate is a variable interest rate, the assumed value of the variable interest rate for all future periods must be the same value that would be assumed for purposes of paragraph (c)(3)(v)(B) of this section. The same actuarial assumptions must be used for all employees in the plan.

(D) Effect of section 415 and 416 requirements. A plan does not fail to satisfy this paragraph (c)(3)(vi) merely because the

accrued benefits under the plan are limited by section 415, or merely because the accrued benefits under the plan are the greater of the accrued benefits otherwise determined under the plan and the minimum benefit described in section 416(c)(1) (regardless of whether the plan is top-heavy).

(vii) Optional forms of benefit--(A) In general. The plan must satisfy the uniform subsidies requirement of § 1.401(a)(4)-3(b)(2)(iv) with respect to all subsidized optional forms of benefit.

(B) Limitation on subsidies. Unless hypothetical allocations are determined under a uniform hypothetical allocation formula that satisfies paragraph (c)(3)(iii)(B) of this section, the actuarial present value of any QJSA provided under the plan must not be greater than the single sum distribution to the employee that would satisfy paragraph (c)(3)(vii)(C) of this section assuming that it was distributed to the employee on the date of commencement of the QJSA.

(C) Distributions subject to section 417(e). Except as otherwise required under section 415(b), **if the plan provides for a distribution alternative that is subject to the interest rate restrictions under section 417(e), the actuarial present value of the benefit paid to an employee under the distribution alternative must equal the nonforfeitable percentage (determined under the plan's vesting schedule) of the greater of the following two amounts--**

(1) The current value of the employee's hypothetical account as of the date the distribution commences, calculated in accordance with paragraph (c)(3)(v)(A) of this section.

(2) The actuarial present value (calculated in accordance with § 1.417(e)- 1(d)) of the employee's accrued benefit.

(D) Determination of actuarial present value. For purposes of this paragraph (c)(3)(vii), actuarial present value must be determined using a reasonable interest rate and mortality table. A standard interest rate and a standard mortality table are considered reasonable for this purpose.

(viii) Past service credit. . . .

(ix) Employees beyond normal retirement age. . . .

(x) Additional uniformity requirements. . . .

(d) Safe harbor testing method for defined benefit plans that are part of a floor-offset arrangement . . .

* * *

(emphasis added).

PUBLIC LAWS

Pub. L. 93-406, 88 Stat. 829 (Sept. 2, 1974)
Employee Retirement Income Security Act of 1974

//29 USC 1054.//

SEC. 204. BENEFIT ACCRUAL REQUIREMENTS

* * *

(d) Notwithstanding section 203(b) (1), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received-

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $1,750) permitted under regulation prescribed by the secretary of the treasury, or

(2) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

* * *

SEC. 1012. MINIMUM VESTING STANDARDS.

(a) In general.-Subpart B of Part I of Subchapter D of Chapter 1 is amended by adding after section 410 //ante, p. 898.// the following new section:

"SEC. 411. MINIMUM VESTING STANDARDS.

"(a) General rule.-A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of

normal retirement age (as defined in subsection (a) (8)) . . .

* * *

"(7) Accrued benefit.--

"(a) In general.-For purposes of this section, the term 'accrued benefit' means-

"(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c) (3), expressed in the form of an annual benefit commencing at normal retirement age, or

"(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

"(b) Effect of certain distributions.-Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received-

"(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $1,750) permitted under regulations prescribed by the secretary or his delegate, or

"(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

* * *

Pub. L. 98-397, 98 Stat. 1426 (Aug. 23, 1984)
Retirement Equity Act of 1984

SEC. 103. REQUIREMENT OF JOINT AND SURVIVOR ANNUITIES AND PRERETIREMENT SURVIVOR ANNUITIES.

(a) GENERAL RULE. -- Section 205 (29 U.S.C. 1055) is amended to read as follows:

"REQUIREMENT OF JOINT AND SURVIVOR ANNUITY

AND PRERETIREMENT SURVIVOR ANNUITY

"SEC. 205. (a) Each pension plan to which this section applies shall provide that --

"(1) in the case of a vested participant who retires under the plan, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

"(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

"(b) (1) This section shall apply to --

"(A) any defined benefit plan,

* * *

"(d) For purposes of this section, the term "qualified joint and survivor annuity' means an annuity --

"(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

"(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

"(e) For purposes of this section --

"(1) Except as provided in paragraph (2), the term "qualified preretirement survivor annuity' means a survivor annuity for the life of the surviving spouse of the participant if --

"(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if --

"(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

"(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had --

"(I) separated from service on the date of death,

"(II) survived to the earliest retirement age,

"(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

"(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

"(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

"(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1), the term "qualified preretirement survivor annuity' means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the account balance of the participant as of the date of death.

* * *

"(g)(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $3,500. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

"(2) If --

"(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity

exceeds $3,500, and
"(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution, the plan may immediately distribute the present value of such
annuity.
"(3) For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

* * *

"(h) "29 USC 1002' For purposes of this section --
"(1) the term "vested participant' means any participant who has a nonforfeitable right (within the meaning of section 3(19)) to any portion of the accrued benefit derived from employer contributions,
"(2) the term "annuity starting date' means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability), and
"(3) the term "earliest retirement age' means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

* * *

SEC. 105. RESTRICTIONS ON MANDATORY DISTRIBUTIONS.

(a) GENERAL RULE. -- Section 203 (29 U.S.C. 1053) is amended by adding at the end thereof the following new subsection:
"(e)(1) If the present value of any accrued benefit exceeds

$3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant.

"(2) For purposes of paragraph (1), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.'.

(b) CONFORMING AMENDMENT. -- Paragraph (1) of section 204(d) (29 U. S.C. 1054(d)(1)) is amended by striking out "$1,750' and inserting in lieu thereof "$3,500'.

* * *

SEC. 203. REQUIREMENT OF JOINT AND SURVIVOR ANNUITIES AND PRERETIREMENT SURVIVOR ANNUITIES.

* * *

"SEC. 417. "26 USC 417' DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF MINIMUM SURVIVOR ANNUITY REQUIREMENTS

* * *

"(e) RESTRICTIONS ON CASH-OUTS. --

"(1) PLAN MAY REQUIRE DISTRIBUTION IF PRESENT VALUE NOT IN EXCESS OF $3,500. -- A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $3,500. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consents in writing to such distribution.

"(2) PLAN MAY DISTRIBUTE BENEFIT IN EXCESS OF $3,500 ONLY WITH CONSENT. -- If --

"(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $3,500, and

"(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution, the plan may immediately distribute the present value of such annuity.

"(3) DETERMINATION OF PRESENT VALUE. -- For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

* * *

SEC. 205. RESTRICTIONS ON MANDATORY DISTRIBUTIONS.

(a) "26 USC 411' GENERAL RULE. -- Subsection (a) of section 411 (relating to minimum vesting standards) is amended by adding at the end thereof the following new paragraph:

"(11) RESTRICTIONS ON CERTAIN MANDATORY DISTRIBUTIONS. --

"(A) IN GENERAL. -- If the present value of any accrued benefit exceeds $3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant.

"(B) DETERMINATION OF PRESENT VALUE. -- For purposes of subparagraph (A), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the

Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.'.

(b) "26 USC 411' CONFORMING AMENDMENT. -- Subparagraph (B) of section 411(a)(7) (relating to effect of certain distributions) is amended by striking out "$1,750' and inserting in lieu thereof "$3,500'.

* * *

Pub. L. 99-514, 100 Stat. 2085 (Oct. 22, 1986)
Tax Reform Act of 1986

* * *

SEC. 1139. INTEREST RATE ASSUMPTIONS.

(a) IN GENERAL. -- Subparagraph (B) of section 411(a)(11) is amended to read as follows:

"(B) DETERMINATION OF PRESENT VALUE. --

"(i) IN GENERAL. -- For purposes of subparagraph (A), the present value shall be calculated --

"(I) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

"(II) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under subclause (I)).

In no event shall the present value determined under subclause (II) be less than $25,000.

"(ii) APPLICABLE INTEREST RATE. -- For purposes of clause (i), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination."

(b) CONFORMING AMENDMENT. -- Paragraph (3) of section 417(e) (relating to determination of present value) is amended

to read as follows:

"(3) DETERMINATION OF PRESENT VALUE. --

"(A) IN GENERAL. -- For purposes of paragraphs (1) and (2), the present value shall be calculated --

"(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

"(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than $25,000.

"(B) APPLICABLE INTEREST RATE. -- For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination."

(c) AMENDMENTS TO ERISA. -

(1) IN GENERAL. -- Paragraph (2) of section 203(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(e)(2)) is amended to read as follows:

"(2)(A) For purposes of paragraph (1), the present value shall be calculated --

"(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

"(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than $25,000.

"(B) APPLICABLE INTEREST RATE. -- For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination."

(2) CONFORMING AMENDMENT. -- Paragraph (3) of section 205(g) of such Act (29 U.S.C. 1055(g)(3)) is amended to read as follows:

"(3)(A) For purposes of paragraphs (1) and (2), the present value shall be calculated --

"(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

"(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than $25,000.

"(B) For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.".

Pub. L. 103-465, 108 Stat. 4809 (Dec. 8, 1994)
Retirement Protection Act of 1994

SEC. 767. SINGLE SUM DISTRIBUTIONS.

(a) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986 RELATING TO MINIMUM BENEFITS.--

<< 26 USCA § 411 >>

(1) DETERMINATION OF PRESENT VALUE FOR PURPOSES OF RESTRICTIONS ON MANDATORY DISTRIBUTIONS.--Subparagraph (B) of section 411(a)(11) is amended to read as follows:

"(B) DETERMINATION OF PRESENT VALUE.--For purposes of subparagraph (A), the present value shall be calculated in accordance with section 417(e)(3)."

(2) DETERMINATION OF PRESENT VALUE FOR PURPOSES OF RESTRICTIONS ON CASH-OUTS.--Paragraph (3) of section 417(e) is amended to read as follows:

"(3) DETERMINATION OF PRESENT VALUE.--

"(A) IN GENERAL.--

"(i) PRESENT VALUE.--Except as provided in subparagraph (B), for purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

"(ii) DEFINITIONS.--For purposes of clause (i)--

"(I) APPLICABLE MORTALITY TABLE.--The term 'applicable mortality table' means the table prescribed by the Secretary. Such table shall be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)).

"(II) APPLICABLE INTEREST RATE.--The term 'applicable interest rate' means the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe.

"(B) EXCEPTION.--In the case of a distribution from a plan that was adopted and in effect before the date of the enactment of the Retirement Protection Act of 1994, the present value of any distribution made before the earlier of--

"(i) the later of the date a plan amendment applying

subparagraph (A) is adopted or made effective, or

"(ii) the first day of the first plan year beginning after December 31, 1999,

shall be calculated, for purposes of paragraphs (1) and (2), using the interest rate determined under the regulations of the Pension Benefit Guaranty Corporation for determining the present value of a lump sum distribution on plan termination that were in effect on September 1, 1993, and using the provisions of the plan as in effect on the day before such date of enactment; but only if such provisions of the plan met the requirements of section 417(e)(3) as in effect on the day before such date of enactment."

* * *

(c) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

<< 29 USCA § 1053 >>

(1) DETERMINATION OF PRESENT VALUE FOR PURPOSES OF RESTRICTIONS ON MANDATORY DISTRIBUTIONS.--Section 203(e)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(e)(2)) is amended to read as follows:

"(2) For purposes of paragraph (1), the present value shall be calculated in accordance with section 205(g)(3)."

<< 29 USCA § 1055 >>

(2) DETERMINATION OF PRESENT VALUE FOR PURPOSES OF RESTRICTIONS ON CASH- OUTS.--Section 205(g)(3) of such Act (29 U.S.C. 1055(g)(3)) is amended to read as follows:

"(3) DETERMINATION OF PRESENT VALUE.--

"(A) IN GENERAL.--

"(i) PRESENT VALUE.--Except as provided in subparagraph (B), for purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

"(ii) DEFINITIONS.--For purposes of clause (i)--

"(I) APPLICABLE MORTALITY TABLE.--The term 'applicable mortality table' means the table prescribed by the Secretary of the Treasury. Such table shall be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5) of such Code).

"(II) APPLICABLE INTEREST RATE.--The term 'applicable interest rate' means the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

"(B) EXCEPTION.--In the case of a distribution from a plan that was adopted and in effect prior to the date of the enactment of the Retirement Protection Act of 1994, the present value of any distribution made before the earlier of--

"(i) the later of when a plan amendment applying subparagraph (A) is adopted or made effective, or

"(ii) the first day of the first plan year beginning after December 31, 1999,

shall be calculated, for purposes of paragraphs (1) and (2), using the interest rate determined under the regulations of the Pension Benefit Guaranty Corporation for determining the present value of a lump sum distribution on plan termination that were in effect on September 1, 1993, and using the provisions of the plan as in effect on the day before such date of enactment; but only if such provisions of the plan met the requirements of section 205(g)(3) as in effect on the day before such date of enactment."

<< 26 USCA § 411 NOTE >>

(d) EFFECTIVE DATE.--

(1) IN GENERAL.--The amendments made by this section shall apply to plan years and limitation years beginning after December 31, 1994; except that an employer may elect to treat the amendments made by this section as being effective on or after the date of the enactment of this Act.

(2) NO REDUCTION IN ACCRUED BENEFITS.--A participant's accrued benefit shall not be considered to be reduced in violation of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 merely because (A) the benefit is determined in accordance with section 417(e)(3)(A) of such Code, as amended by this Act, or section 205(g)(3) of the Employee Retirement Income Security Act of 1974, as amended by this Act, or (B) the plan applies section 415(b)(2)(E) of such Code, as amended by this Act.

Pub. L. 105-34, 111 Stat. (Aug. 5, 1997)
Taxpayer Relief Act of 1997

* * *

<< 26 USCA § 411 >>

SEC. 1071. PENSION ACCRUED BENEFIT DISTRIBUTABLE WITHOUT CONSENT INCREASED TO $5,000.

(a) AMENDMENT TO 1986 CODE.--

(1) IN GENERAL.--Subparagraph (A) of section 411(a)(11) (relating to restrictions on certain mandatory distributions) is amended by striking "$3,500" and inserting "$5,000".

<< 26 USCA §§ 411, 417, 457 >>

(2) CONFORMING AMENDMENTS.--

(A) Section 411(a)(7)(B), paragraphs (1) and (2) of section 417(e), and section 457(e)(9) are each amended by striking "$3,500" each place it appears (other than the headings) and inserting "the dollar limit under section 411(a)(11)(A)".

(B) The headings for paragraphs (1) and (2) of section 417(e) and subparagraph (A) of section 457(e)(9) are each amended by striking "$3,500" and inserting "DOLLAR LIMIT".

(b) AMENDMENTS TO ERISA.--

<< 29 USCA § 1053 >>

(1) IN GENERAL.--Section 203(e)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(e)(1)) is amended by striking "$3,500" and inserting "$5,000".

<< 29 USCA §§ 1054, 1055 >>

(2) CONFORMING AMENDMENTS.--Sections 204(d)(1) and 205(g)(1) and (2) (29 U.S.C. 1054(d)(1) and 1055(g)(1) and (2)) are each amended by striking "$3,500" and inserting "the dollar limit under section 203(e)(1)".

HOUSE AND SENATE REPORTS

H.R. Rep. No. 93-807 (Feb. 21, 1974)

* * *

Because the objective is to encourage more adequate provision for retirement, plans are permitted to defer the payment of benefits to individuals with vested rights until they reach normal retirement age and are separated from the firm. [FN11]

* * *

FN11 However, to avoid requiring a plan to carry relatively small amounts of benefits on its books for a long period of time, the bill permits a plan to elect to pay off the employee's vested rights in the form of a lump-sum payment when the employee is separated if the amount of the distribution is less than $1,750.

* * *

H.R. Conf. Rep. No. 93-1280 (Aug. 12, 1974)

III. VESTING AND RELATED RULES (SECS. 203-209, 1012, 1015, 1021, 1022, AND 3032 OF THE BILL, AND SECS. 401, 411, AND 414 OF THE INTERNAL REVENUE CODE.)

A plan may provide for the "cash out" of an employee's accrued benefit. In other words, the plan may pay out, in a lump sum, the entire **value** of an employee's vested accrued benefit. . . .

A cash-out could be made from the plan without the employee's consent only if the payment (a) was made due to the termination of the employee's participation in the plan, (b) constituted the **value** of the employee's entire interest in the plan, and (c) did not exceed . . . $1,750 (with respect to the

value of the benefit attributable to employer's contributions).

. . .

A higher cash-out could be made with the employee's consent.

(emphasis added).

S. Rep. No. 98-575 (Aug. 2, 1984)

* * *

The committee on finance, to which was referred the bill (H.R. 4280) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve the delivery of retirement benefits and provide for greater equity under private pension plans for workers and their spouses and dependents . . . reports favorably thereon with an amendment and recommends that the bill as amended do pass.

* * *

For purposes of determining the present value of the participant's benefit, the bill provides that a plan may not use an interest rate that is greater than the rate used by the Pension Benefit Guaranty Corporation (PBGC) for valuing a lump sum distribution upon plan termination.

* * *

For purposes of calculating the present value of a benefit as of the date of the distribution, the plan is required to use an interest rate no greater than the rate used by the Pension Benefit Guaranty Corporation (PBGC) in valuing a lump sum distribution upon plan termination. . . .

* * *

(emphasis added).

H.R. Conf. Rep. No. 99-841 (Sept. 18, 1986)

* * *

4. Cash-Out of Certain Accrued Benefits

Present Law

Under present law, in the case of an employee who separates from service, a pension, profit-sharing, or stock bonus plan may not immediately distribute any portion of the participant's benefit without the participant's consent, if the present value of the participant's accrued benefit exceeds $3,500 (sec. 411(a)(11) of the Code and sec. 203 of the Employee Retirement Income Security Act (ERISA)). **The interest rate used in determining the present value of a benefit for purposes of these cash out rules may not exceed the interest rate that would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation (PBGC)** for purposes of determining the present value of a lump-sum distribution upon termination of the plan. The PBGC rate in effect at the beginning of a plan year may be used throughout the plan year if the plan so provides.

With respect to those plans subject to the automatic survivor benefit requirements (Code secs. 401(a)(11) and 417 and ERISA sec. 205), if the present value of the benefit under either the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $3,500, then the consent of the participant and spouse (or the surviving spouse if the participant has died) must be obtained before the plan can immediately distribute any part of the present value in a form other than a qualified joint and survivor annuity or a qualified preretirement survivor annuity. The interest rate used for determining the present value of a benefit may not exceed the interest rate that would be used (as of the date of the distribution) by the PBGC for purposes of determining the

present value of a lump sum distribution on plan termination. The PBGC rate in effect at the beginning of a plan year may be used throughout the plan year if the plan so provides.

House Bill

No provision.

Senate Amendment

The Senate amendment modifies the interest rate required to be used for purposes of determining the present value of (1) a participant's accrued benefit, (2) a qualified preretirement survivor annuity, or (3) a qualified joint and survivor annuity. Under the Senate amendment, a plan is required to compute the first $3,500 of the present value of a benefit by using an interest rate no greater than the interest rate (deferred or immediate, whichever is appropriate) that would be used by the PBGC (as of the date of distribution) upon the plan's termination. The remaining portion of the present value of the benefit is required to be determined using an interest rate no greater than 120 percent of the interest rate (deferred or immediate, whichever is appropriate) that would be used by the PBGC (as of the date of distribution) upon the plan's termination. The provision applies to distributions after December 31, 1984, except for distributions made after December 31, 1984, and before the date of enactment if such distributions were made in accordance with the regulations issued under the Retirement Equity Act of 1984.

Conference Agreement

The conference agreement follows the Senate amendment, except that a plan is required to use an interest rate no greater than the interest rate (deferred or immediate, whichever is appropriate) that would be used by the PBGC (as of the date of distribution) upon the plan's termination for purposes of determining whether (1) a participant's accrued benefit can be cashed out without consent because the present value of the vested accrued benefit is less than $3,500 and (2) the present value of a participant's vested accrued benefit is less than $25,000.

If the present value of the vested accrued benefit is no more than $25,000, then the amount **to be distributed** to the participant or beneficiary is calculated using the PBGC rate. If the present value of the accrued benefit exceeds $25,000 (using the PBGC interest rate), then the conference agreement provides that the amount **to be distributed** is determined using an interest rate no greater than 120 percent of the interest rate (deferred or immediate, whichever is appropriate) that would be used by the PBGC (as of the date of distribution) upon the plan's termination. In no event, however, is the amount **to be distributed** reduced below $25,000 when the interest rate used is 120 percent of the applicable PBGC rate.

For example, assume that, upon separation from service, the present value of an employee's total accrued benefit (including, e.g., any accrued benefits within section 411(d)(6) for which the employee is not yet eligible) is $50,000 using the applicable PBGC rate. Under the conference agreement, the plan may **distribute** to this employee (if the employee and, if applicable, the employee's spouse consents) the total accrued benefit, calculated using 120 percent of the applicable PBGC rate (e.g., **$47,000**).

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H.R. Rep. No. 103-632(I) (Aug. 26, 1994)

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SUMMARY OF H.R. 5110, THE "URUGUAY ROUND AGREEMENTS ACT"

H.R. 5110, the "Uruguay Round Agreements Act," approves the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) and the Statement of Administrative Action (SAA) proposed to implement the Agreements, that were submitted to the Congress on September 27, 1994. . . . **The final two titles contain various provisions to offset the projected cost of the implementing legislation in order to comply with the pay-as-you-go requirements of the Budget Enforcement Act.**

* * *

TITLE VII-REVENUE PROVISIONS

* * *

Title VII also contains pension reforms that are designed to improve funding in current underfunded defined benefit plans guaranteed by the Pension Benefit Guaranty Corporation (PBGC) and to improve participant protections.

* * *

SUBTITLE F.-PENSION PLAN FUNDING AND PREMIUMS

I. Overview of present law

Defined benefit pension plans.-A defined benefit pension plan is a type of employer-sponsored retirement plan that provides benefits to participants based upon a formula specified in the plan. For example, a defined benefit pension plan could provide a benefit equal to a percentage of an employee's average compensation multiplied by the number of years of service with the employer. A defined benefit pension plan could also provide a flat dollar benefit based on years of service, or a specified percentage of final or average compensation. The key feature of such a plan is that the benefit promised is based on the plan formula, not on the assets or investment experience of the plan.

In order to help ensure that the promised benefits are paid to plan participants, defined benefit pension plans are subject to minimum funding requirements under both the Internal Revenue Code (the Code) and title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), which require the employer sponsoring the plan to make certain contributions to fund the plan. These requirements are discussed in detail below.

Pension Benefit Guaranty Corporation.-As enacted in ERISA, as well as under present law, the minimum funding requirements permit an employer to fund defined benefit pension plan benefits over a period of time. Thus, it is possible that a plan may be terminated at a time when plan

assets are not sufficient to provide all benefits earned by employees under the plan. In order to protect plan participants from losing retirement benefits in such circumstances, the Pension Benefit Guaranty Corporation (PBGC), a corporation within the Department of Labor, was created in 1974 by ERISA to provide an insurance program for benefits under most defined benefit pension plans maintained by private employers. According to the PBGC's annual report for fiscal year 1993, the single-employer insurance program covers more than 32 million participants in about 64,000 defined benefit pension plans.

Termination of underfunded pension plans.-Prior to 1986, an employer generally could, subject to contractual obligations, terminate a single- employer defined benefit pension plan at any time without regard to the financial health of the employer and without regard to the level of assets in the plan. If a single-employer defined benefit pension plan was terminated with assets insufficient to pay benefits at the level guaranteed by the PBGC, the employer was liable to the PBGC for the lesser of the insufficiency or an amount equal to 30 percent of the employer's net worth.

Under these rules, employers that wanted to rid themselves of unfunded liabilities could simply terminate the plan, and the PBGC would be liable for benefits. The PBGC was in some cases prevented from recouping its liability from the employer, even if the employer was financially sound. The plan termination rules were amended to prevent such transferring of liabilities to the PBGC by the Single-Employer Pension Plan Amendments Act of 1986 (SEPPAA) and were modified further by the Pension Protection Act of 1987.

Under present law, a defined benefit pension plan with assets insufficient to provide for benefit liabilities can be terminated voluntarily by the employer only if the employer and members of the controlled group of the employer are in financial distress (a distress termination). In general, benefit

liabilities include all fixed and contingent liabilities to plan participants and beneficiaries.

Following a distress termination, the PBGC pays out all benefits under the plan, including guaranteed benefits and those not guaranteed. The amount of benefits in excess of guaranteed benefits that are paid to plan participants depends on the level of plan funding and the amount the PBGC is able to recover from the employer. The employer is liable to the PBGC for the full amount of unfunded benefit liabilities.

Guaranteed benefits.-The PBGC guarantees vested retirement benefits (other than those that vest solely on account of the plan termination), up to a maximum benefit of $2,556.82 per month for plans terminating in 1994. The dollar limit is indexed annually for inflation. The guarantee is reduced for benefits starting before age 65, and does not apply to certain types of ancillary benefits. In the case of a plan or a plan amendment that has been in effect for less than 5 years before a plan termination, the amount guaranteed is generally phased in by 20 percent a year.

Sources of PBGC funding.-The PBGC is funded by assets in terminated plans, amounts recovered from employers who terminate underfunded plans, premiums paid with respect to covered plans, and investment earnings. All covered plans are required to pay a flat per-participant premium and underfunded plans are subject to an additional variable premium based on the level of underfunding.

As initially enacted in ERISA, covered plans were required to pay an annual flat premium to the PBGC of $1.00 per plan participant. The flat-rate per- participant premium has been increased several times since the enactment of ERISA, and is currently $19 per participant in 1994. The variable rate premium was enacted by the Pension Protection Act of 1987. It was believed that underfunded plans should bear a greater share of the premium than well-funded plans because they

pose a greater risk of exposure to the PBGC. The amount of the variable rate premium is $9.00 per each $1,000 of unfunded vested benefits, up to a maximum of $53 per participant. Thus, the maximum total per-participant premium for an underfunded plan is $72 per year.

II. Reasons for change

Financial status of the PBGC.-As of September 30, 1993, the PBGC reported a deficit of $2.9 billion in the single-employer insurance program. This is an increase over the $2.7 billion deficit reported as of the end of the prior fiscal year. The PBGC also estimated in its 1993 annual report that approximately $53 billion in unfunded liabilities existed in single-employer defined benefit pension plans in 1992. Approximately 72 percent of this underfunding, or approximately $38 billion, is concentrated in single-employer plans sponsored by just 50 companies, primarily in the steel, automobile, tire, and airline industries.

The PBGC has estimated its future financial status under a variety of assumptions. The single-employer program deficit could range from $1.9 billion by the end of 2003 if losses are relatively low, to $13.8 billion by the end of 2003 if losses are high.

In a study released by the U.S. General Accounting Office (GAO) in December 1992, [FN18] GAO reported that the 44 plans with the largest claims against the PBGC for calendar years 1986-88 had aggregate unfunded liabilities at termination of $2.7 billion. These unfunded liabilities were $990 million, or 58 percent, higher than the $1.7 billion in unfunded liabilities reported by the 44 plans on their last, pretermination annual filing with the Internal Revenue Service (IRS). GAO termed this additional unfunded liability a "hidden liability" to the PBGC because it was not reported by plans before termination.

Hidden liabilities can result from several causes. Most of the $990 million in hidden liability reported in the GAO study was due to PBGC's higher estimate of plan liabilities as a result of PBGC's use of actuarial assumptions that were different than the assumptions used by plan sponsors. Hidden liabilities also can result because of the payment of shutdown [FN19] or special early retirement benefits, earlier-than-anticipated retirements, and PBGC's receipt of fewer assets than reported by the plans.

Reasons for PBGC's financial status.-The chronic underfunding of some defined benefit pension plans poses a significant risk to the PBGC. The PBGC's single-employer insurance program has a $2.9 billion deficit. Furthermore, the overall level of underfunding is rapidly increasing among single employer plans and now exceeds $50 billion. Of this amount, reasonably possible future claims against the PBGC exceed $13 billion. These claims, and the continued underfunding of pension benefits threaten the future solvency of the PBGC and may lead to a taxpayer bailout if the Federal Government is required to pay pension benefits to participants of underfunded pension plans which terminate.

There is concern that the sponsors of underfunded defined benefit pension plans continue to promise additional pension benefits without funding the plans' existing unfunded pension liabilities. Under present law, new pension liabilities can be added to an underfunded defined benefit pension plan before old liabilities are funded. Companies in financial difficulty sometimes use benefit increases as a means to increase compensation when they cannot afford to pay higher current wages. Workers may be willing to accept such unfunded future pension promises because they are at least partially insured by the PBGC and workers recognize that the immediate costs to their employers of higher wages makes such wage increases unlikely.

Under present law, sponsors of underfunded defined benefit

pension plans are not required to fund their plans within a reasonable time. Under present law, plan sponsors are allowed to fund their pension liabilities over an extended period of time. Some companies have taken advantage of the flexibility under the present-law rules and have chosen to maintain their plans at significantly underfunded levels. Some companies have used this funding flexibility to maintain chronically underfunded plans whose financial condition has not improved since the passage of ERISA nearly 20 years ago. In a few cases, companies have terminated plans with no remaining assets without ever violating present-law minimum funding standards.

* * *

As reported by the GAO, following plan termination, plan underfunding typically is nearly 60 percent greater than previously reported by the plan sponsor on its latest Form 5500 filed with the IRS. In addition, the level of underfunding tends to rise rapidly shortly before termination of a defined benefit pension plan. . . .

The PBGC's deficit has increased, in part, because premiums paid to the PBGC are not sufficient to cover its operations. The PBGC's premium income continues to be insufficient to cover the costs of actual and expected plan terminations for which the PBGC is responsible. Further, the PBGC's variable rate premium does not properly reflect the risk assumed by the PBGC in providing insurance for severely underfunded defined benefit pension plans.

* * *

Results of bill.-The bill is designed to improve the funding of single-employer defined benefit pension plans and reduce the potential exposure of the PBGC. The bill also is intended to reduce or eliminate the PBGC's operating deficit and to reduce the defined benefit pension system's unfunded

liabilities for which the Federal Government is potentially responsible. . . .

III. Retirement Protection Act of 1994

A. PART I-PENSION PLAN FUNDING

1. Minimum funding requirements (secs. 751 and 761 of the bill, secs., 412(c), (l), and (m) of the Code, and secs., 204, 302 (d), and (e) of ERISA)

* * *

Normal cost.-The normal cost for a plan for a year generally represents the cost of future benefits allocated to the year by the funding method used by the plan for current employees and, under some funding methods, for separated employees. Specifically, it is the amount actuarially determined that would be required as a contribution by the employer to maintain the plan if the plan had been in effect from the beginning of service of the included employees and if the costs for prior years had been paid, and all assumptions as to interest, mortality, time of payment, etc., had been fulfilled. **The normal cost will be funded by future contributions to the plan** (1) in level dollar amounts, (2) as a uniform percentage of payroll, (3) as a uniform amount per unit of service (e.g., $1 per hour), or (4) **on the basis of the actuarial present values of benefits considered accruing in particular plan years.**

* * *

The accrued liability of a plan is the actuarial present value of projected pension benefits under the plan that will not be funded by future contributions to meet normal cost.

* * *

9. Single sum distributions (sec. 767 of the bill, secs. 411(a)(11), 417(e), and 415(b) of the Code, and secs. 203(e) and 205(g) of ERISA)

a. Determination of present value

Present law

Under the Code and ERISA, if the present value of a participant's nonforfeitable accrued benefit exceeds $3,500, the benefit cannot be distributed (i.e., cashed out) without the consent of the participant. In addition, if the present value of a joint and survivor annuity exceeds $3,500 it cannot be distributed without the consent of the participant and the participant's spouse. For purposes of these rules, present value is calculated by using an interest rate no greater than (1) the rate that would be used (as of the date of the distribution) by the PBGC for purposes of determining the present value of a lump-sum distribution on plan termination if the vested accrued benefit (using such rate) is not in excess of $25,000, or (2) 120 percent of such PBGC rate if the vested accrued benefit exceeds $25,000.

Explanation of provision

Under the bill, present value for purposes of the cash-out rules must be no less than the present value determined by using the mortality table that is to be prescribed by the Secretary of the Treasury based upon the "prevailing commissioners' standard table" used to determine reserves for group annuity contracts issued on the date as of which present value is determined. The prevailing commissioners' standard table means, with respect to any contract, the most recent commissioners' standard tables prescribed by the National Association of Insurance Commissioners which are permitted to be used in computing reserves for that type of contract under the insurance laws of at least 26 States when the

contract was issued (sec. 807(d)(5)(A) of the Code). Currently, the prevailing commissioners' standard table used to determine reserves for annuity contracts is the GAM 83 mortality table. Future changes in the prevailing table will only apply to the calculation of present value when the Secretary of the Treasury issues guidance making such changes applicable.

In addition, present value for purposes of the cash-out rules must be no less than the present value determined by using the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such earlier time as provided in Treasury regulations. The annual rate of interest on 30-year Treasury securities is the rate published by the Board of Governors of the Federal Reserve System.

A plan will not violate the prohibition on the reduction of accrued benefits merely because it calculates benefits in accordance with the provision.

Effective date

The provision is generally effective for plan years beginning after December 31, 1994, except that an employer can elect to treat the provision as being effective on or after the date of enactment.

Under a transition rule for distributions from plans in effect on the date of enactment of the bill, until the earlier of the first plan year beginning after 1999 or the later of when a plan amendment applying the provision is adopted or made effective, the bill requires present value to be calculated as under present law, using the interest rate valuation methodology for lump-sum distributions under PBGC regulations in effect on September 1, 1993, the present-law Code and ERISA rules, and the current plan provisions (provided they are consistent with present law).

* * *

Changes in interest rates and mortality assumptions

In general.-As under present law, the calculation of the deficit reduction contribution for underfunded plans is based on the plan's current liabilities. **Under the bill, a plan's current liability is determined as under present law, except that the bill (1) lowers the maximum interest rate that can be used to determine the current liability, and (2) requires all underfunded plans to use the same mortality table to determine current liability.**

Interest rate.-For plan years beginning on or after January 1, 1999, the bill reduces the highest permissible rate that may be used to calculate current liability to 105 percent of the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year. For years beginning after 1994 and before 1999, the maximum permitted interest rate is the following percentage of such 4-year weighted average rate: plan years beginning in 1995, 109 percent; plan years beginning in 1996, 108 percent; plan years beginning in 1997, 107 percent; and plan years beginning in 1998, 106 percent.

Mortality tables.-Under the bill, in the case of plan years beginning after December 31, 1994, the mortality table used to determine current liability is to be prescribed by the Secretary based upon the 1983 Group Annuity Mortality Table (GAM 83 mortality table). Such mortality table will be effective until the later of plan years beginning in 2000 or such time as the Secretary prescribes new tables by regulations. . . .

H.R. Rep. No. 103-632(II) (Aug. 26, 1994)

Section 405-Single sum distributions

A plan must value a single-sum payment using an interest rate no greater than the applicable PBGC interest rate. (If the value exceeds $25,000, the interest rate must be no greater than 120% of the applicable PBGC rate.) PBGC regulations have been revised to change the methodology for calculating the applicable PBGC interest rate for terminated plans. The change in the regulations does not apply for purposes of determining the applicable interest rate for valuing single-sum payments. A plan may use any reasonable mortality table it specifies.

Congress adopted the interest rate cap to prevent plans from using unreasonably high interest rates to determine the present value of participants' benefits. If plans could use high interest rates, plans could lower the single sum paid to participants. The PBGC interest rates were adopted as the standard because the rates were presumed to duplicate group annuity rates. However, the PBGC interest rates reflect annuity rates only if considered in combination with specified PBGC mortality tables, and the law does not require that the specified PBGC mortality tables be used.

* * *

Sections 405(a) and 405(c) of the bill amend sections 203(e) and 205(g) of ERISA and sections 411(a)(11) and 417(e) of the Code to change the manner in which single sum distributions must be valued for purposes of these sections. Under the bill, single sum distributions may not be less than the amount that would be derived using the 30-year Treasury bond rate as of the date of distribution and a mortality table prescribed by the Secretary of the Treasury that is based on the prevailing Commissioner's standard mortality table used to determine reserves for group annuity contracts (currently the GAM 83

mortality table). Until the earlier of the 2000 plan year or the time the plan is amended to reflect this change, the bill requires single sum distributions from plans adopted and in effect before enactment of the bill to be calculated as under present law. The distributions must be calculated using the interest rate valuation methodology for lump sum distributions under PBGC regulations in effect on September 1, 1993 (but not the actual interest rate in effect on that date), and ERISA (or Code) and plan provisions in effect immediately before enactment, provided that the plan provisions complied with such prior ERISA or Code provisions.

* * *

OTHER AUTHORITATIVE MATERIALS

General Accounting Office Report, Private Pensions, Implications of Conversions to Cash Balance Plans No. GAO/HEHS-00-185 (Sept. 29, 2000)

Employer-provided pensions are an important source of income for many retired persons. To encourage employers to establish and maintain pension plans for their employees, the federal government provides preferential tax treatment under the Internal Revenue Code (IRC) for plans that meet certain requirements. The Joint Committee on Taxation estimates that in fiscal year 2000 the tax expenditure for qualified employer-sponsored pension plans will be about $76 billion. [n.1] **In exchange for preferential tax treatment, an employer is required to design the pension plan within legal limits that are intended to improve the equitable distribution and security of pension benefits.** There has been recent controversy concerning how conversions of traditional defined benefit pension plans to cash balance plans can affect workers, especially those nearing retirement. [n.2]

* * *

[W]e conducted a random sample survey of 420 firms on the 1999 Fortune 1000 list and reviewed pension plan documents to examine the features of cash balance plans. [n.3] **In addition, we conducted in-depth interviews with officials from 14 firms with cash balance or similar plans to discuss why they adopted such plans and to obtain information about how firms disclosed changes to their pension programs.** We modeled pension plan design features to compare pension benefits provided by a "basic" cash balance plan and defined benefit plan with a final average pay formula, common to large defined benefit plans. [n.4] **Also, we interviewed various federal agency officials, pension consultants, and actuaries. We conducted our work between September 1999 and August 2000 in accordance with**

generally accepted government auditing standards. . . .

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Key reasons firms gave for converting include lowering total pension costs; adding a lump sum feature to increase the portability of pension benefits, thereby improving the firm's ability to recruit more mobile workers; and facilitating communication of the value of plan benefits. . . .

* * *

Conversions to cash balance plans can be advantageous to certain groups of workers–for example, to those who switch jobs frequently–but can lower pension benefits for others. **Cash balance plans provide a larger share of a participant's accumulated benefit earlier in a career, compared with a traditional defined benefit plan that is based on final average pay. As a result, conversions can increase the value of some workers' benefits, especially younger or short-tenured workers who leave firms before retirement. . . . Other workers, however, can be disadvantaged after conversion to a cash balance plan.**

Unlike traditional defined benefit plans, cash balance plans can result in a declining rate of normal retirement benefit accrual over time. This declining accrual rate can result in older workers' receiving lower benefits at retirement from a cash balance plan than they would have received from a traditional final average pay plan if it had not been converted. However, workers could also receive lower retirement benefits under a traditional plan if an employer reduces future accruals or terminates the plan. **Under some circumstances, conversions to cash balance plans can also result in periods during which some workers do not earn additional pension benefits while other workers continue to accrue benefits. These situations known as "wearaway," tend to last longer for older or long-tenured workers** and

occur because a participant's initial cash balance benefit is less than the value of the benefit accrued under the prior plan. . .

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Under defined contribution plans such as 401(k) plans, workers have individual accounts to which employers, employees, or both make periodic contributions. Defined contribution plan benefits are based on the contributions to and investment returns on these accounts. Employees bear the risk of poor investment performance and often control, at least in part, how the funds are invested.

Cash balance plans are referred to as hybrid plans because legally they are defined benefit plans but contain features that resemble defined contribution plans. Similar to traditional defined benefit plans, cash balance plans use a formula to determine pension benefits. However, cash balance plans express benefits as an "account balance." An employee account balance is based on hypothetical pay credits (percentage of salary or compensation) and hypothetical interest credits to employee accounts rather than an annuity. **As with other defined benefit plans, under cash balance plans, employee pension benefits are paid from commingled funds invested in a pension trust on behalf of all participants**, and plan trustees have a fiduciary responsibility for all assets in the pension trust. **Hypothetical account balances need not be related to investment returns on assets in the plan's pension trust, and hypothetical accounts are not credited with the plan's actual investment gains or losses. Employees neither own these "accounts" nor generally make investment decisions.** Cash balance plans are defined benefit plans because federal pension law defines any pension plan that does not provide individual accounts with benefits based solely on those accounts as a defined benefit plan. [n.8]

* * *

Prompted by concern from members of the Congress and charges by participants in plans that were converted, federal agencies are now reviewing age discrimination and other issues raised by cash balance plans. In September 1999, EEOC began a review of potential age discrimination issues in cash balance conversions and is coordinating with agencies that are responsible for administering federal pension laws. **Within the past year, more than 800 workers and retirees have filed age discrimination charges with EEOC concerning cash balance plans. EEOC has opened 34 cases to investigate these charges. The Department of the Treasury and IRS are currently reviewing tax qualification issues raised by cash balance plans. For example, in September 1999, IRS announced that is would begin requiring that applications for the approval of cash balance formula designs be forwarded to its headquarters for technical review, resulting in an effective moratorium on approving conversions to cash balance plans. . . .**

* * *

Firms adopted cash balance formulas for a variety of reasons, including reducing total pension costs, increasing portability to enhance the recruitment of younger or more mobile workers, and adding a lump sum feature that can be used to better explain pension benefits to workers. . . .

* * *

While we were told by pension practitioners, employer associations, and agency officials of firms' continuing interest in cash balance or similar hybrid plan designs, few of the firms we surveyed expected to adopt a cash balance plan in the future. . . . All of the firms considering adopting a cash balance plan told us that the continuing uncertainty as to whether such plans violate pension and age discrimination laws might discourage them from converting their plans.

* * *

Other firms told us, however, that they decided not to use cash balance plans because they had older or long-tenured workforces that could be adversely affected by a change to a cash balance plan.

Some firms we surveyed that chose to convert their plans cited the financial implications of changing to a cash balance plan as a key reason in their decision. Reducing the overall cost of the defined benefit plan was a primary reason some firms converted to a cash balance formula. For example, some firms have reduced costs by eliminating early retirement subsidies on future accruals. A PricewaterhouseCoopers survey of 100 cash balance plan sponsors found that 56 percent of firms expected the long-term cost of their defined benefit plans to decrease after conversion. . . .

Converting to cash balance plans is also an alternative to termination of a pension plan. Firms can terminate their defined benefit plans, but doing so imposes various economic costs. When plan sponsors terminate defined benefit plans, the sponsors must pay income and excise taxes on any surplus assets, immediately vest participants in their accrued benefits, and provide participants with annuities or lump sum payments. These costs may prevent some firms from terminating their plans. [n. 15] Instead, firms can convert to cash balance plans and achieve economic benefits from the surplus pension funds without incurring the costs related to plan termination. . . .

* * *

Most firms that expressed a desire to attract and hire more mobile workers as a reason for converting did not, however, change their vesting requirement when converting from a traditional defined benefit plan to a cash balance plan. As

under traditional defined benefit plans, workers under a cash balance plan must remain with a firm long enough to earn a right to such benefits. Large defined benefit plans typically have a "cliff" vesting requirement–that is, participants are 100 percent vested in their benefits after a certain number of years, with no rights to a pension benefit if they leave the firm before then. Most of these large plans have 100 percent vesting after 5 years. **Seventy-two percent of the firms we surveyed with cash balance plans had a 5-year cliff vesting requirement,** while the remaining firms sponsoring cash balance plans had various vesting requirements, including graded vesting. [n.17]

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Conversions to cash balance plans can result in higher pension benefits accruing earlier in a worker's career and increase portability of benefits, which can be advantageous to younger or more mobile workers. However, the declining rate at which normal retirement benefits accrue in "basic" cash balance plan formulas (providing a level pay credit for all workers) can result in older workers receiving smaller annuities after conversion from a plan with a final average pay formula, assuming that the traditional plan remained unchanged. Conversions can also result in periods during which older workers accrue no new pension benefits while others do. While most Fortune 1000 firms in our survey that adopted cash balance plans have included transition provisions to mitigate the effects of plan formula changes on some participants, these provisions can vary in the extent to which they accomplish this objective.

* * *

Typically, participants under a defined benefit plan with a final average pay formula accrue the greatest share of their benefits in the final years of their careers because benefits are based on completed years of service and final average

salary, both of which usually increase as workers age. Generally, under a cash balance plan, the basis for determining benefits payable at normal retirement age includes both the hypothetical account balance (annual pay and interest credits) accrued to date plus the value of future hypothetical interest credits each pay credit would earn up to the plan's normal retirement age. As shown in figure 2, **workers under a cash balance plan who have many years before reaching normal retirement age earn a greater proportion of their benefits early in their careers.**

* * *

Cash balance plans can result in a decreasing rate at which normal retirement benefits accrue over time. The rate at which normal retirement benefits accrued in both defined benefit final average pay plans and cash balance plans depends on the number of years participants have remaining until they reach the plan-specified normal retirement age. However, in defined benefit plan with a final average pay formula, the rate of normal retirement benefit accrual increases as participants age, being driven by growth in service and wages. **As with defined benefit plans, under the law, the accrued benefit in cash balance plans must be expressed as an annual benefit beginning at normal retirement age. Cash balance plans must express benefits in this manner to comply with defined benefit plan rules.** [n.20] **For purposes of satisfying these rules, employee hypothetical accounts are not equal to the accrued benefits participants are entitled to receive. As a result, cash balance plans cannot simply provide participants hypothetical account balances as their benefit. Instead, the hypothetical balance must be calculated to comply with defined benefit plan accrual and other requirements.**[1]

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[1] [n.21 in text] In a calculation of the actual benefit, the hypothetical account balance is projected forward with interest earnings to the plan-specified normal retirement age. Next, the projected balance is converted into a normal

When a worker's hypothetical account balance in a given year is projected forward with hypothetical interest to normal retirement age, the rate of normal retirement benefit accrual declines as the employee ages, because each additional year's pay credit will have one less year in which future interest will compound. . . .

* * *

Our comparative design scenarios illustrate the declining rate of normal retirement benefit accruals inherent in cash balance plans. [n.22] The basic cash balance plans we simulated add annuity benefits to a participant's total pension benefit at smaller dollar increments each year that the participant ages.[2]

* * *

A cash balance plan's declining rate of normal retirement benefit accrual as workers age is the reason some have charged that these plans are age discriminatory. . . .

* * *

As with traditional defined benefit plans, workers must meet a plan's vesting requirement before they have a right

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retirement age annuity, using a plan-specified discount rate and mortality assumptions. Finally, the value of the annuity is discounted back to current dollars, using the assumptions for mortality and interest specified by federal regulations, to convert the normal retirement age annuity into an actuarially equivalent lump sum in current dollars.

[2] [n.23 in text] We measure the rate of benefit accrual by calculating the incremental annuity benefit added by the traditional final average pay and cash balance formulas each year to the total annuity benefit. The incremental annuity added by both formulas for a given year is determined by subtracting the total annuity benefit of the previous year from the total annuity benefit of the current year. . .

to their accrued pension benefit. BLS [Bureau of Labor Statistics] reported that median tenure among all workers aged 25 and older was 4.7 years in 1998, indicting that some workers change jobs before vesting. As we discussed earlier, most cash balance plans, like many traditional defined benefit plans, have a 5-year vesting requirement. Plan sponsors we interviewed told us that the 5-year vesting requirement of many cash balance plans results in some short-term, mobile workers' not benefitting from the higher benefits provided by cash balance plans because they leave before vesting and forfeit their accrued benefits.

* * *

Depending on the age of a participant at conversion and a plan's design features, conversions of defined benefit plans with final average pay formulas to cash balance plans can result in lower annuities for some participants than they would receive if no conversion occurs. . . . After conversion, the decreasing rate of normal retirement benefit accrual in the basic cash balance plan we modeled produces a lower annuity at retirement compared with the annuity benefit that traditional final average pay formula would generate. For example, **a 45-year-old worker at the time of conversion receives an annual annuity of about $18,500 at retirement from the cash balance plan instead of the $39,800 annuity the worker could have received from the defined benefit plan with a final average pay formula.** [n.31] **Likewise, a worker 50 years old at conversion receives an annual annuity of about $17,800 from the cash balance plan rather than the $35,100 annuity the final average pay formula could have provided.** For all workers we modeled, conversions to the basic cash balance plan resulted in lower annuities at the plan's normal retirement age than resulting from the final average pay formula.

For workers with equal salary and tenure at conversion, the basic cash balance plan we modeled produces the lowest

annuity at retirement for the worker who was oldest at conversion. This results from older workers having fewer years after conversion to earn benefits from the cash balance formula and a lower rate of normal retirement benefit accrual compared with the prior final average pay formula. **For example, we modeled benefits from a basic cash balance formula for a 35-, 45-, and 55-year-old worker with equal salary and tenure at conversion.** [n.32] Conversion to the cash balance plan resulted in lower annuities for each of these workers compared with the annuities they would have received had no conversion occurred. **The rate of normal retirement benefit accrual generated by the cash balance plan is lowest for the 55-year-old worker** (se fig. 5).

* * *

Conversions to cash balance plans sometimes result in "wearaway" situations in which some workers do not earn additional pension benefits after conversion while other workers continue to accrue benefits. [n.33] A wearaway period is created at conversion when a participant's opening hypothetical account balance is set at less than the present value of his or her prior accrued benefits–that is, the amount benefits would currently equal if paid out as a lump su. During wearaway, hypothetical pay and interest credit contributions do not represent new pension accruals until the cash balance account exceeds the value of benefits accrued under the prior formula. This is because workers who leave a firm during a wearaway period are entitled to receive the higher benefit they had accrued under the old formula before conversion.

Wearaway established at conversion tends to be longer for older workers. For example, the basic cash balance plan we modeled as establishing opening account balances at less than the present value of prior accrued benefits generated a 2-year lump sum wearaway for a 35-year-old worker, a 4-year wearaway for a 45-year-old worker, and an 11-year wearaway

for a 55-year-old worker at conversion (see table 2). [n.34] This is because older workers generally accrue larger benefits before conversion. Thus, older workers must wait longer before their hypothetical balances catch up to the value of prior accrued benefits and new benefits begin to accrue. **Wearaway created at conversion is also problematic for older workers because these periods often occur during the years when the traditional formula would have provided the most favorable rate of pension benefit accrual for them had no conversion occurred.**

* * *

We also simulated several examples in which workers' salary and tenure were equal at conversion in order to determine whether the length of a wearaway created at conversion can differ for workers of different ages. [n.35] In most of these simulations, the length of a lump sum wearaway created at conversion was extended 1 to 20 years for workers with equal salary and tenure but different ages. For example, we found that a 45-year-old faces a 4-year wearaway at conversion, while a 55-year-old with the same salary and tenure at conversion faces a 6-year wearaway. Another simulation we modeled indicates that a 40-year-old worker faces a 3-year wearaway at conversion while a 50-year-old worker with the same salary and tenure faces a 4-year wearaway. **Although our simulations show that differences in wearaway periods based on age can be small, the older worker faces the longer wearaway at conversion in every instance in which a difference in wearaway periods emerged.**

* * *

Annuity wearaways can arise as a result of conversion to a cash balance formula, depending on the form of annuity benefit that the worker selects and the design of early retirement benefits in the prior formula. . . . **[I]f the prior formula had included a subsidized early benefit, the 45-**

year-old worker who elects to receive early retirement benefits at age 60 has a 9-year wearaway of the early retirement annuity benefit even if the opening balance is established with the mandatory 417(e) discount rate.

* * *

Summary plan descriptions (SPD) are another means of providing information to employees about how conversions to cash balance plans can affect their pension benefits. . . .

* * *

However, many of the SPDs we reviewed did not clearly explain that the cash balance accounts were hypothetical and that participants did not actually own individual accounts as in a 401(k) plan. About half of the cash balance plan SPDs we analyzed did not make any reference to the hypothetical nature of cash balance plan accounts. Not stating that the accounts are hypothetical or making claims that the cash balance accounts are similar to 401(k) plan accounts can prevent plan participants from understanding how cash balance plans work and the benefits they are entitled to receive. For example, without making reference to the hypothetical nature of cash balance accounts, one firm described its cash balance plan as a "personal retirement account" that grows on the basis of compensation credits and interest credits. Other summary plan descriptions or related plan information described cash balance plans in a similar manner, including providing illustrations of the growth in cash balance accounts alongside of examples of how 401(k) plan accounts can increase over time without explicitly explaining that participants did not "own" the cash balance accounts and did not control how the assets are invested.

* * *

(emphasis added; bracketed footnotes and material between asterisks, including footnotes, charts, tables and graphs, omitted)

[The GAO Report can be ordered by calling the GAO (202/512-6000), or by visiting the GAO's website: http://www.gao.gov]

Statement on the Plan Termination and Control Act of 1985

Thursday, June 6, 1985

99th Cong. 1st Sess.

131 Cong. Rec. E 2614

REFERENCE: Vol. 131 No. 74; Continuation of Senate Proceedings of June 5, 1985, Issue No. 73; and Proceedings of June 6, 1985, Issue No. 74

TITLE: STATEMENT ON THE PLAN TERMINATION AND REVERSION CONTROL ACT OF 1985

SPEAKER: HON. EDWARD R. ROYBAL OF CALIFORNIA IN THE HOUSE OF REPRESENTATIVES

TEXT:
Test that appears in UPPER CASE identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

MR. ROYBAL. MR. SPEAKER, IN AN ATTEMPT TO ADDRESS THE PROBLEM OF OVERFUNDED PENSION PLAN TERMINATIONS BY EMPLOYERS WHICH DEPRIVE AMERICAN WORKERS AND RETIREES OF THEIR RETIREMENT INCOME SECURITY, I AM TODAY REINTRODUCING THE PLAN TERMINATION AND REVERSION CONTROL ACT OF 1985.

* * *

AN ABUSE NOTED IN PREVIOUS COMMITTEE HEARINGS AND RECOGNIZED AS AN ISSUE WITHIN THE ADMINISTRATION GUIDELINES HAS BEEN THE USE OF INORDINATELY HIGH INTEREST RATES APPLIED TO

LUMP-SUM DISTRIBUTIONS MADE TO PARTICIPANTS UPON TERMINATION. TESTIMONY BY ONE WITNESS BEFORE THE COMMITTEE INDICATED THAT BASED UPON HIS 12 YEARS OF SERVICE WITH HARPER & ROW PUBLISHERS HE HAD RECEIVED A LUMP-SUM DISTRIBUTION OF APPROXIMATELY $700 FOR HIS ACCRUED BENEFIT. UPON SEEKING A LIFE ANNUITY FROM AN INSURANCE CARRIER HOWEVER, HE RECEIVED A QUOTE OF APPROXIMATELY $7,000 TO SECURE SUCH AN ANNUITY. THE ADMINISTRATION HAS RESPONDED TO THIS ABUSE BY PROMULGATING A REGULATION THAT REQUIRES AN INTEREST RATE BE USED WHICH APPROXIMATES A MARKET OR ANNUITY RATE.

* * *

PLAN DOCUMENT
(relevant provisions, only)

Introductory Page

The Georgia-Pacific Corporation Salaried Employees Retirement Plan is hereby amended and restated to read as follows. This amended and restated plan (the "Plan") shall be effective as of January 1, 1989. **The purpose of the amendment and restatement of this plan is to satisfy the requirements of the Tax Reform Act of 1986 and subsequent legislation.**

The Plan was previously amended and restated on June 1, 1989 to convert the Plan to a cash balance **defined benefit** pension plan and this amended and restated plan was effective as of January 1, 1989. . . .

* * *

(emphasis added).

Article 1
Definitions

The following words and phrases as used herein shall have the following meanings, unless a different meaning is plainly required by context:

1.1 Accrued Benefit. Accrued Benefit means, as of the time of reference, a monthly amount of benefit, payable in the form of an increasing life annuity, commencing on a Participant's Normal Retirement Date, where the amount of such monthly benefit is the result of dividing the then credits to such Participant's Personal Account by the applicable factor from Section A of Appendix A.

* * *

1.5 Benefit Commencement Date. Benefit Commencement Date means for each Participant or Beneficiary, in the case of an annuity form of distribution, the first day of the first period for which an amount is payable as an annuity under this Plan and , in the case of a lump sum payment, the first date on which all events have occurred which entitle the Participant to payment under this Plan.

* * *

1.10 Company. Company means Georgia-Pacific Corporation, a Georgia corporation, and any successor to such corporation.

* * *

1.29 Normal Retirement Date. Normal Retirement Date means the date on which a Participant reaches his sixty-fifth (65th) birthday.

* * *

1.32 Personal Account. Personal Account means the bookkeeping account maintained with respect to a Participant as described in Article 3.

1.33 Plan. Plan means the Georgia-Pacific Corporation Salaried Employees Retirement Plan as amended and restated effective January 1, 1989.

* * *

1.38 Qualified Election. Qualified Election means an election to waive the automatic joint and fifty percent (50%) surviving spouse increasing annuity described in Section 6.3(a). The election must be in writing on a form prescribed by and filed with the Plan Administrator, and shall be invalid without Spousal Consent. Revocation of a prior Qualified Election may be made by a Participant in writing without the consent of his Spouse at any time before the Participant's benefits

commence. The number of revocations and Qualified Elections shall not be limited.

* * *

1.41 Severance Date. Severance Date means the date as of which an Employee is deemed to have severed his relationship as an Employee . . .

1.42 Spousal Consent. Spousal Consent means either (a) the written consent by the Participant's Spouse to a Qualified Election (as defined in Section 1.38), designation of Beneficiary or similar action by the Participant, which consent acknowledges the effect of such election, designation or action on such Spouse, which is witnessed by a notary public and which may expressly permit further elections, designations or similar action by such Spouse or (b) "deemed consent" to any such election, designation or similar action where the Plan Administrator is satisfied that written consent cannot be obtained because there is no Spouse, because the Participant's Spouse cannot be located, or because of other circumstances which may be provided by applicable law. . . .

* * *

1.44 Trust Agreement. Trust Agreement means the trust agreement between the Company and the Trustee, established as part of the Plan for the purpose of funding benefits under the Plan, or any successor trust agreement or agreements.

1.45 Trust Fund. Trust Fund means all such money or other property which is held by the Trustee, pursuant to the terms of the Trust Agreement.

* * *

Article 3
Participants' Personal Accounts and Credits to Personal Accounts

3.1 Establishment of Personal Accounts.
(a) A Personal Account shall be established and maintained for each Participant to which credits shall be made in accordance with the provisions of this Article 3. The Personal Accounts established and maintained pursuant to this Article 3 are intended to be bookkeeping accounts. Neither the establishment of such Personal Accounts nor the accrual of credits to such personal Accounts shall be construed as an allocation of assets of the Plan to, or a segregation of such assets in, such Personal Accounts, or otherwise as creating a right in any person to receive specific assets of the Plan. Benefits provided under the Plan shall be paid from the general assets of the Plan in the amounts, in the forms and at the times provided in Articles 4, 5 and 6.

* * *

3.2 Basic Monthly Credits for Service after January 1, 1989.
The amount credited to a Participant's Personal Account pursuant to this Section 3.2 depends on the Participant's Compensation as an Eligible Employee for the applicable calendar month. Credits pursuant to this Section 3.2 shall begin as of the end of the calendar month which begins on or after January 1, 1989 or which includes the date the Eligible Employee became a Participant, whichever comes last, and shall stop after the calendar month in which the Participant's Severance Date occurs. The amount of monthly credits to the Personal Account of an eligible Participant shall be equal to four percent (4%) of the Participant's Compensation for that calendar month as determined by the Plan Administrator. . .

* * *

3.5 Periodic Adjustments.

(a) Beginning January 1, 1990, and during each Plan Year after 1989, each Participant's Personal Account shall be automatically increased as of the end of each calendar month during the Plan Year in the manner described in Section 3.5(b) by a Periodic Adjustment Percentage calculated as follows:

(1) Determine the PBGC twelve (12) month average immediate annuity interest rate for the calendar year preceding the year in which the adjustment is to be made;

(2) Add to (1) 0.75%;

(3) Divide the sum of (1) and (2) by twelve (12); and

(4) Round the result to six (6) decimal places.

When referenced in this Plan, "annual periodic Adjustment Percentage" shall mean the Periodic Adjustment percentage calculated above in this subsection (a) multiplied by 12.

(b) Until the Benefit Commencement Date, each Personal Account shall be adjusted as of the end of each calendar month by an amount equal to the product of the Periodic Adjustment Percentage for the applicable Plan Year and the Personal Account balance at the beginning of such month. No adjustment shall be made under this Section 3.5 for any calendar month which includes the Benefit Commencement Date for any Personal Account.

* * *

Article 4
Retirement Benefits

* * *

4.5 Vested Benefit. If a Participant, who is not eligible for a retirement benefit in accordance with Sections 4.1, 4.2, 4.3 or 4.4, terminates employment after completing at least five (5) years of Service, he shall be entitled to receive a benefit equal to his then Accrued Benefit payable in accordance with the provisions of Article 6. . . .

* * *

Article 6
Payment of Benefits

* * *

6.2 Standard Benefit. The normal form of benefit payable to a Participant who is not married at his Benefit Commencement Date is an increasing annuity for the life of the Participant, the amount of which is determined as follows:
(a) The monthly payment in the Plan Year of his Benefit Commencement Date is determined in accordance with Section A of Appendix A.
(b) The monthly payment in the following Plan Year is equal to the amount determined under subparagraph (a) increased by the monthly Periodic Adjustment Percentage for that Plan Year times the number of monthly payments made in the preceding Plan Year.
(c) The monthly payment in each subsequent Plan year is equal to the monthly amount payable in the preceding Plan year increased by the annual Periodic Adjustment Percentage for the applicable Plan Year.

6.3 Standard Benefit for Married Participants.
(a) The normal form of benefit payable to a Participant who is married at his Benefit Commencement Date is a joint and fifty percent (50%) surviving spouse increasing annuity unless . . .
(b) Such joint and fifty percent (50%) surviving spouse increasing annuity shall be the Actuarial Equivalent (calculated pursuant to Section C of Appendix A) of the increasing annuity form described in Section 6.2 under which the Participant will receive a reduced annuity for his life, increasing as provided in Section 6.2 and ending with the payment for the month of his death; and if the person who was the Participant's Spouse on the Participant's Benefit Commencement Date survives the Participant, monthly

payments will be made to such Surviving Spouse beginning with the month after the month of his death for the Surviving Spouse's lifetime initially equal to fifty percent (50%) of the last monthly payment to the Participant and increasing thereafter as provided in Section 6.2.

* * *

(e) During the period commencing ninety (90) days before a Participant's Benefit Commencement Date, and ending not later than such Benefit Commencement Date, a Participant may waive his right to receive his benefit in the form of a joint and fifty percent (50%) surviving spouse increasing annuity, and elect instead to receive such benefit in the normal form described in Section 6.2, or in an optional form described in Section 6.4. Such waiver shall be made only by filing a Qualified Election with the Plan Administrator. . . .

6.4 Optional Forms of Benefit.
(a) An unmarried Participant, or a married Participant who has made an election under Section 6.3(e), may elect to receive, in lieu of the standard form of benefit in Sections 6.2 or 6.3, a benefit in one of the optional forms described below:

* * *

Option C: Lump Sum Payment. A single lump sum payment equal to the amount credited to the Participant's Personal Account as of the end of the month preceding his Benefit Commencement Date.

* * *

Article 7
Financing the Plan

7.1 Participant Contributions. Participants shall make no contributions under the Plan.

7.2 Employer Contributions. The Employer shall make such contributions from time to time which it shall deem necessary to provide the benefits of this Plan in accordance with generally accepted actuarial principles. . . .

7.3 Funding Policy. The Company shall be responsible for establishing and reviewing periodically a funding policy and method for the Plan, and in connection therewith to adopt and revise from time to time such actuarial assumptions and funding methods to be used in all actuarial calculations which may be required in connection with the Plan and to receive and review the reports of an Enrolled Actuary.

7.4 Funding Medium. The Company has entered into a Trust Agreement and/or Group Annuity Contract which shall be part of the Plan. All payments made pursuant to this Article 7 shall be paid to the Trust Fund and/or Insurance Company in such manner as the Company shall determine from time to time. All such payments and increments thereon shall be held and disbursed in accordance with the provisions of the Plan, the Trust Agreement and any Group Annuity Contract as each shall be applicable in the circumstances. No person shall have any interest in, or right to, any part of the funds so held in the Trust Fund or funds which may be held by the Insurance Company, except as expressly provided in the Plan, the Trust Agreement and the Group Annuity Contract.

7.5 Actuarial Gains/Forfeitures. Actuarial gains and/or forfeitures, if any, arising from termination of participation, or from any other source, shall not be applied to increase the benefits any Participant would otherwise receive under the Plan, but shall be used to reduce Employer contributions becoming due thereafter.

* * *

Article 10
General Provisions

* * *

10.6 Qualified Defined Benefit Plan. The Employer intends that the Plan (including the Trust Agreement and the Group Annuity Contract forming a part thereof) shall be a defined benefit pension plan of an employer for the exclusive benefit of its employees or their beneficiaries as provided for in Section 501(a) of the Code.

* * *

Article 15
Merger of Certain Great Northern Nekoosa Plans

15.1 Plan Merger. Effective January 1, 1991 . . .the Retirement Plan for Salaried Employees of Great Northern Nekoosa Corporation . . . shall be merged into this Plan. After January 1, 1991, all participants in the named plans shall be transferred to, and become participants in, this Plan and will have their (and their beneficiaries') benefits determined under this Plan . . .

* * *

Appendix A
Determination of Various Actuarial Equivalents

SECTION A: Factors to Convert to Increasing Life Annuity
The monthly amount of a Participant's increasing annuity shall equal the credits in the Participant's Personal Account as of his Benefit Commencement Date divided by the applicable annuity value (as defined below), based on the Participant's age as of his Benefit Commencement Date.

If the Benefit Commencement Date is the first of the month following the Participant's sixty-fifth (65th) birthday, the applicable annuity value is 210. Otherwise, the applicable annuity value is 210 plus (or minus) 0.50 for each month that the Benefit Commencement Date is before (or after) the first of the month following the Participant's sixty-fifth (65th) birthday.

SECTION B: Level Annuity

A Participant's level annuity shall be the single life annuity benefit which is the Actuarial Equivalent of the Increasing Life Annuity in Section A, as determined in accordance with Section D below, based on the credits in the Participant's Personal Account as of his Benefit Commencement Date.

SECTION C: Joint and 50% Survivor Annuity; Joint and 100% Survivor Annuity

A Participant's Joint and 50% Survivor Annuity, or his Joint and 100% Survivor Annuity, whichever is applicable, shall be the contingent annuity benefit which is the Actuarial Equivalent of the Increasing Life Annuity in Section A, as determined in accordance with Section D below, based on the credits in the Participant's Personal Account as of his benefit Commencement Date.

SECTION D:

Except as otherwise provide in this Plan, actuarial equivalence shall be determined using (1) the 1971 Group Annuity Table, blended 80% male and 20% female for a Participant and 80% female and 20% male for a Participant's Spouse or Contingent Annuitant, and (2) an interest rate equal to the immediate annuity rate set by the Pension Benefit Guaranty Corporation in its regulations under Section 4062 of ERISA, and (3) such other actuarial factors and methods as the Enrolled Actuary for this Plan recommends to the Company as reasonable and appropriate under the circumstances.

June 27, 1997 Amendment to the Plan

AMENDMENT NUMBER ONE
TO THE
GEORGIA-PACIFIC CORPORATION
SALARIED EMPLOYEES RETIREMENT PLAN
(As Amended and Restated Effective January 1, 1989)

THIS AMENDMENT to the GEORGIA-PACIFIC CORPORATION SALARIED EMPLOYEES RETIREMENT PLAN (the "Plan"), effective as stated below and adopted this 26th day of June, 1997, by GEORGIA-PACIFIC CORPORATION, a Georgia corporation ("G-P");

WITNESSETH:

* * *

WHEREAS, G-P desires to amend the Plan to change the Periodic Adjustment Percentage to comply with recent guidance issued by the Internal Revenue Service with respect to cash balance plans;

* * *

NOW, THEREFORE, in consideration of the premises, the Plan is hereby amended as follows:

* * *

3. Section 3.5(a) of the Plan is hereby amended effective as of January 1, 1996 to read as follows:

"(a) Beginning January 1, 1990 and during each Plan Year after 1989, each Participant's Personal Account shall be automatically increases as of the end of each calendar month during the Plan year in the manner described in Section 3.5(b) by a Periodic Adjustment Percentage calculated as follows:

(1) For Plan Years beginning after December 31, 1989 and before January 1, 1996

(A) Determine the PBGC twelve (12) month average immediate annuity interest rate for the calendar year preceding the year in which the adjustment is to be made;

(B) Add to (A) 0.75%; and

(C) Divide the sum of (A) and (B) by twelve (12).

(2) For Plan Years beginning after December 31, 1995, determine the monthly rate which will effectively yield on an annual basis, when compounded, the annual 30-year Treasury Constant Maturities rate published by the Federal Reserve Board for November of the calendar year immediately preceding the year in which the adjustment is to be made.

The Periodic Adjustment Percentage calculated under this Section 3.5(a) shall be rounded to six (6) decimal places."

* * *

(bolded emphasis added)

DOCUMENTS RELATING TO MR. LYONS' ADMINISTRATIVE CLAIM

Letter from Georgia-Pacific to Paul Holzman, dated April 17, 1996

Georgia-Pacific Corporation

Law Department

133 Peachtree Street, N.E.
P.O. Box 105605
Atlanta, Georgia 30348-5605
Telephone (404) 652-7388
Facsimile (404) 584-1461

Daniel R. Kopti
Senior Counsel

April 17, 1996

SENT VIA OVERNIGHT DELIVERY

Mr. Paul Holzman
National Center for Retirement Benefits, Inc.
666 Dundee Road, Suite 1200
Northbrook, IL 60062

Re: Mr. Jerry Lyons

Dear Mr. Holzman:

Your letter of March 18 to Ms. Becky Crockford has been referred to us for response.

We understand that Mr. Jerry Lyons is concerned about the interest rate used in calculating the lump sum distribution that he received in January 1993 from the Georgia-Pacific Salaried Employees Retirement Plan ("SERP"). He states in

your letter that the Plan Administrator for the SERP must calculate the present value of normal retirement benefits by using an interest rate permitted under Code Section 417(e) and IRS regulation 1.417(e)-1. He asserts that an incorrect interest rate was used in his case, causing a reduction in his lump sum distribution. Your letter asks to have his SERP benefits recalculated and to have any additional amounts paid to him, along with interest.

Please be advised that the SERP is a special form of defined benefit plan known as a "cash balance" plan. As described in IRS Notice 96-8, a "cash balance" plan defines benefits for each employee by reference to the amount of the employee's hypothetical account balance. An employee's hypothetical account balance is credited with hypothetical allocations and hypothetical earnings determined under a formula selected by the employer and set forth in the plan. These hypothetical allocations and hypothetical earnings are designed to mimic the allocations of actual contributions and actual earnings to an employee's account that would occur under a defined contribution plan. Most cash balance plans are designed to permit, after termination of employment, a distribution of an employee's entire accrued benefit in the form of a single sum distribution equal to the employee's hypothetical account balance as of the date of the distribution.

According to the Plan Administrator's records, Mr. Lyons terminated employment in January 1991. He elected at that time to postpone receipt of his SERP benefits until a future date. During 1991 and 1992, his personal account was credited with hypothetical earnings (which the SERP calls "credit adjustments") equal to the average Pension Benefit Guaranty Corporation immediate annuity rate in effect for the previous

calendar year, plus 0.75%. The credit adjustment for 1991 was equal to 8.23%, while the credit adjustment for 1992 was equal to 7.71%, compounded monthly. **In November 1992, Mr. Lyons requested a lump sum distribution of his personal account in the SERP. The distribution took place in January 1993 and was equal to the hypothetical balance in his personal account of $36,109.15. Contrary to Mr. Lyons' assertion, his lump sum distribution was not calculated with reference to the present value of a normal retirement benefit or by using an interest rate that violated IRS requirements.**

During the past several months we have exchanged several letters on the issue of whether Mr. Lyons qualifies as a "participant" in the SERP. As stated previously, the Supreme Court concluded in Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 117 (1989) that former employees who have no reasonable expectation of returning to covered employment can qualify as "participants' in an employee benefit plan only if they have a colorable claim to vested benefits. We are not persuaded that Mr. Lyons' claim for SERP benefits, as expressed in your letter of March 18, constitutes a colorable claim to vested benefits. However, in the interest of alleviating Mr. Lyons' concerns and as an expression of its good faith in this matter, the Plan Administrator for the SERP has decided to provide you with the summary plan description for the SERP. Also, if you would like a copy of the plan document, please send us a check in the amount of $28.75 to pay for photocopying charges (at the rate of 25 cents per page), and the document will be sent to you. The check should be made payable to "Georgia-Pacific Corporation Salaried Employees Retirement Plan". The furnishing of these documents does not constitute an admission by the Plan Administrator that Mr. Lyons is a "participant" in the SERP.

If you have any additional questions or comments regarding this matter, we request that you direct them to our attention.

Very truly yours,

Daniel R. Kopti
Senior Counsel

Enclosure
93314

(emphasis added).

OTHER PERTINENT MATERIALS

Affidavit of James A. Talerico

[district court caption omitted]

The undersigned, being first duly sworn, deposes and states:

1. I am an adult resident of the state of Georgia and am competent to give the testimony set forth below. I offer this Affidavit in support of Defendants' Motion for Summary Judgment.

2. I am Chief Counsel, Benefits, for Georgia-Pacific Corporation and my business address is 133 Peachtree Street, N.E., Atlanta, Georgia 30303.

3. The testimony set forth below is based upon my personal knowledge and experience in the execution of my duties as Chief Counsel, Benefits for Georgia-Pacific Corporation.

4. In October 1988, Georgia-Pacific Corporation submitted to the Internal Revenue Service a proposed amendment to the Salaried Employee Retirement Plan ("SERP") at issue in this case to obtain a determination that the SERP, as amended, would continue to be a tax-qualified deferred compensation plan. The proposed amendment converted the SERP from a traditional defined benefit plan to a cash balance pension plan, effective January 1, 1989. A true and correct copy of the amended and restated SERP is attached hereto as Exhibit A.

5. In May of 1989, the Internal Revenue Service issued a favorable determination letter stating that the SERP, as amended, (as set forth in Exhibit A) would continue to comply with the tax qualification requirements of the Internal Revenue Code. A true and correct copy of the favorable

determination letter is attached hereto as Exhibit B. Pursuant to this favorable determination letter, in June of 1989, the SERP was amended and restated to become a cash balance pension plan effective January 1, 1989.

6. All participants in the SERP, including Mr. Lyons, have been issued a copy of the Summary Plan Description for the SERP. A true and correct copy of the relevant Summary Plan Description for the SERP is attached hereto as Exhibit C.

7. On March 31, 1995, the SERP submitted another application to the Internal Revenue Service for a determination that the SERP continued to be tax-qualified. A true and correct copy of the application letter is attached as Exhibit D.

8. On January 18, 1996, the Internal Revenue Service issued Notice 96-8.

9. In response to Notice 96-8, the SERP was amended, effective January 1, 1996, to adopt one of the interest crediting rates suggested in the Notice. A true and correct copy of the proposed Amendment No. One is attached as Exhibit E.

10. On July 31, 1996, the Company submitted proposed Amendment No. One to the Internal Revenue Service to reflect the change in the interest crediting rate. Proposed Amendment No. One clearly stated that the changes had been made "to comply with recent guidance issued by the Internal Revenue Service with respect to cash balance plans" and, by its terms, was effective January 1, 1996.

11. In May of 1997, the Internal Revenue Service issued a favorable determination letter, stating that the SERP would continue to be a tax-qualified employee benefits plan, provided proposed Amendment No. One was adopted by the Company. A true and correct copy of the favorable determination letter is attached as Exhibit F.

12. Amendment No. One to the SERP was timely adopted on June 26 1997. A true and correct copy of the signed Amendment No. One to the SERP is attached as Exhibit G.

_____

James A. Talerico

Sworn to and subscribed
before me this 6th day
of March, 1998.

_____

Notary Public

My commission expires:
Notary Public, Clayton County, Georgia
My Commission Expires Feb. 26, 2000